

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES, et al., : Civil Action No.:
Plaintiffs, : 1:23-cv-108
versus : Friday, September 13, 2024
GOOGLE LLC, : Alexandria, Virginia
Defendant. : Day 5 a.m.
: Pages 1-163

The above-entitled bench trial was heard before the Honorable Leonie M. Brinkema, United States District Judge. This proceeding commenced at 9:28 a.m.

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18 COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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P R O C E E D I N G S

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THE DEPUTY CLERK: Civil Action Number

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1:23-cv-108, United States of America, et al. versus Google
LLC.

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6

Would counsel please note their appearance for the
record, first for the plaintiffs.

7

MR. HENRY: Good morning, Your Honor. Ty Henry
from the Virginia Attorney General's Office on behalf of the
plaintiffs. Your Honor, with me this morning I have, again,
Elliott Dionisio from the California Attorney General's
office.

12

THE COURT: Good morning.

13

MS. WOOD: Good morning, Your Honor. Julia Tarver
Wood for the Department of Justice for the United States.
With me are my colleagues, Aaron Teitelbaum, Kelly Garcia,
Dan Guarnera and Michael Wolin, and Mr. Mene from the U.S.
Attorney's Office.

18

THE COURT: Good morning.

19

MR. MAHR: Good morning, Your Honor. Eric Mahr on
behalf of Google. With me today is my colleagues Tina
LaRitz, Mr. Isaacson and Mr. Reilly.

22

THE COURT: You have not spoken in this case.

23

MR. MAHR: I have not. Yet glad to be back into
it.

25

THE COURT: Very good. And we have the witness

1 still on the stand from yesterday, and you're still under
2 your oath from yesterday's testimony. All right.

3 MS. GARCIA: Good morning, Your Honor. May I
4 proceed?

5 THE COURT: Yes, ma'am.

6 DIRECT EXAMINATION

7 BY MS. GARCIA:

8 Q Good morning, Mr. Kershaw.

9 A Good morning.

10 Q Yeah. We covered a lot of ground in a brief period of
11 time. I'm going to ask you a few more questions this
12 morning.

13 First, can you just remind us, Rubicon was an ad
14 exchange at the time you worked there; correct?

15 A That is correct.

16 Q And while you were CTO of Rubicon from approximately
17 2016 to 2021, what other ad exchanges did your publisher
18 customers use besides Rubicon?

19 A The most common ones were Google AdX, PubMatic, Index
20 Exchange, AppNexus and OpenX. And then there were other
21 small --

22 THE COURT: Again, Mr. Kershaw, you've got to keep
23 your voice up. It tails off at the end; all right?

24 THE WITNESS: I apologize.

25 THE COURT: Okay.

1 THE WITNESS: Index Exchange, AppNexus, PubMatic,
2 OpenX. And then there was some smaller ones that were used
3 in these specialized cases, but those were the main
4 exchanges.

5 BY MS. GARCIA:

6 Q And yesterday we spoke about Prebid.

10 A By '21, I would say the vast majority of them used
11 Prebid. At least 60 percent or so were using the Prebid
12 wrapper.

13 Q And in 2021 when you left your position, roughly how
14 many of Rubicon's publisher customers used Google's DFP?

15 A All of them, pretty much. You could count the ones
16 that were not using DFP on one hand, and it was
17 extraordinary when you found one. It was kind of like
18 finding a needle in a haystack.

19 Q And when you left in 2021, were you aware of any
20 publishers using a header bidding wrapper such as Prebid
21 instead of DFP?

22 A No. That's not technically possible.

23 Q Can you please explain?

24 A The ad server covers a wide range of potential
25 advertisements. Programmatic, which is what Prebid dealt

1 with, but also direct sold, an inventory that was sold
2 outside the programmatic exchange. So before you could
3 decide what to put on the page, you had to call the ad
4 server because the ad server knew if there had been a
5 pre-sold inventory or some prior arrangement. So there's no
6 way for Prebid to serve as an ad server.

7 Prebid also doesn't have a relationship to put ads
8 on the page. So the only way that Prebid could function is
9 talking to an ad server.

10 Q Now, switching gears a bit.

11 You mentioned yesterday that DV360 was a DSP that
12 purchased transactions through Rubicon; do you recall that?

13 A Yes, I do.

14 Q Approximately how much revenue flowed through Google's
15 DSP to Rubicon's ad exchange?

16 A Our largest DFP from a purchase volume perspective in
17 dollars was Google DBM, we called it, DV360, was about
18 40 percent of our revenue.

19 Q Have you heard of AWBid?

20 A I have.

21 Q What is AWBid?

22 A AWBid is a service from Google that allows their
23 traditional search buyers to purchase on third-party
24 exchanges. This is significant because the search buyers
25 was a unique asset that Google had that no other exchange

1 could have because no one else had a search business. And
2 what that allowed them to do was harness that mid-tier small
3 business-type demand that no one else had the scale to get
4 to.

5 So that was -- it was a unique demand that a
6 publisher had to have by not connecting to -- not having
7 access to that demand hurt your overall ability to make
8 money as a publisher.

9 Q So then did AWBid allow Rubicon to buy Google Ads
10 demand?

11 A They directed pieces of the search demand to exchanges
12 like ours via AWBid, but it was a small percentage of the
13 total.

14 The way search ads or Google AdWords worked is you
15 could buy all kinds of different categories. You could buy
16 sports pages, you could buy entertainment. There was one
17 specific type called retargeting that they made available to
18 us, but all of the other demand was not -- we never saw that
19 demand.

20 Q I'm sorry. You said you never saw that?

21 A No. We only saw the retargeting demand. All of the
22 rest, I'd say 80 percent plus of the AdWords demand was
23 self-contained within Google and was not -- was not
24 available to us or any other exchange outside of Google AdX
25 or Google's inventory.

1 Q And a moment ago you referred to that as small
2 business-type demand; do you recall that?

3 A Yes.

4 Q Can you explain what you mean by that?

5 A Well, I mean, all of the exchanges would go after the
6 Ford Motor companies and the Audis or the big companies, but
7 we didn't have the resources to call Joe's Pizza Shop or the
8 local car dealer. But they purchased ads, and they
9 purchased them at list price. So that's what I mean, that
10 mid-tier. People that have to buy search ads, which is why
11 they had those relationships, but didn't typically buy
12 display ads. So that mid-tier of the market is what came
13 via the Google demand.

14 Q So then why didn't Rubicon create your own demand
15 source in order to reach those smaller advertisers?

16 A We could have hired 100 people, called a bunch of auto
17 dealers and lost a ton of money and went out of business,
18 but we didn't have the scale to -- if you sign up Joe's
19 Pizza Shop, they're not going to buy enough ads to make that
20 worthwhile, and we didn't have the size or the scale to do
21 that.

22 Q And now shifting gears just a bit.

23 Have you heard of Exchange Bidding?

24 A I have.

25 Q What is Exchange Bidding?

1 A Exchange Bidding is -- if you follow the header bidding
2 example, it is a server-side version of that. So Exchange
3 Bidding used the ad server. So the way the ad server used
4 to work is using a thing called line items. So it's a
5 sequential process. First you call this source, then you
6 call that source, then you call the next source.

7 What Prebid does is make it all one auction so
8 everyone competes with each other in a competitive auction.
9 EBDA, or Exchange Bidding, put that into the Google server
10 as a line item, so for the first time they allowed for a
11 unified auction where multiple exchanges bid on the same
12 piece of inventory.

13 Q Did Rubicon participate in Google's Exchange Bidding?

14 A We had eventually. At first we did not. But after a
15 period of time, we were pretty much forced to do so because
16 of the economics around it. Much of the publisher inventory
17 was in EBDA, so in order to access that, we had no choice
18 but to bid on it or to participate.

19 Q And based on what you observed as CTO, or chief
20 technology officer, of an ad exchange in the time period
21 we've been discussing, did Google's exchange product make it
22 easier to compete with Google Adx?

23 A No, it did not do that. It gave us the ability to see
24 inventory, but we had the same inventory available largely
25 through Prebid, so it was an alternative to Prebid. But it

1 did not make it easier for us to compete. In fact, in some
2 ways it made it harder for us to compete because it competed
3 with Prebid.

4 EBDA was a competitor to Prebid, and when EBDA was
5 launched, it was partly to take the wind out of Prebid and
6 slow down the adoption of header bidding in the industry.
7 So as a result, I don't view it as something that helped
8 competitively.

9 Q Briefly could you explain the differences, based on
10 your understanding, between Google's Exchange Bidding and
11 the header bidding wrapper, Prebid?

12 A The differences? Well, there's many differences. One
13 of them runs on the page. So it's JavaScript that runs on
14 the physical web page, which is not very efficient. The
15 Google Exchange Bidding product was server-side, so it sat
16 on the network, so it was faster and more efficient.
17 However, to participate in Prebid costs you nothing, it was
18 free. To participate in Google's EBDA, they charged
19 5 percent to the participants. So you had a 5 percent
20 discount on whatever you bid. If you bid \$1, they would
21 actually bid 95 cents into the auction. Google didn't
22 charge itself this 5 percent. So think about it as a
23 5 percent tax on everyone except for Google in an auction,
24 which means we had to have higher bids by 5 percent just to
25 compete.

1 There was also the fact that, in Prebid, the
2 publisher sees all the bids and is in control is
3 transparent. Everybody knows what's going on in the
4 auction. At EBDA, we didn't see anyone else's bids or
5 Google's, but Google saw all of ours. So that created an
6 information disequilibrium. If I know everyone else's bid,
7 I can bid more efficiently; if I don't know everyone else's
8 bid, I'm at a disadvantage, and that was one of the big
9 limitations.

10 MS. GARCIA: Thank you so much, Mr. Kershaw.

11 We pass the witness.

12 THE COURT: All right. Do we need a book for the
13 cross?

14 MR. MAHR: Yes. It's a very short book.

15 THE COURT: All right.

16 MR. MAHR: My I proceed, Your Honor?

17 THE COURT: Yes, sir.

18 | CROSS-EXAMINATION

19 BY MR. MAHR:

20 Q Good morning, Mr. Kershaw. My name is Eric Mahr. I
21 represent Google. I have a few questions for you.

22 A Sure.

23 Q So you haven't worked in ad tech for over three years?

24 A That is correct.

25 Q Not since you left Magnite, was that in 2021?

1 A That is correct.

2 Q Magnite was known as the Rubicon Project when you first

3 joined?

4 A That is also correct.

5 Q Rubicon Project was a competitor to Google's display

6 ads business?

7 A That's correct.

8 Q And since the name changed while you were there, is it

9 okay if I just refer to it as the Rubicon Project?

10 A You can refer to it however you wish.

11 Q So we'll both understand that I'm referring to it as

12 both Magnite and Rubicon.

13 A That is fine.

14 Q Good.

15 And while you were at the Rubicon Project, you

16 founded an organization called prebid.org?

17 A Cofounded.

18 Q Cofounded it.

19 You were also the chairman of that board?

20 A That was correct. Is correct.

21 Q Now, on the board -- on the direct, you mentioned that

22 Prebid -- something called Prebid.js.

23 Am I correct that Prebid.js refers to the actual

24 JavaScript technology?

25 A That's correct. JavaScript is code that runs on a

1 page.

2 Q And again just to get the vocabulary down, prebid.org
3 is the organization that runs the technology?

4 A Correct. Prebid.org is an open-source community
5 organization with governance rules. It administers and owns
6 the code, including Prebid.js, the stuff that runs on the
7 page, as well as Prebid server, as well as other
8 technologies that we contributed to the industry.

9 Q Just to try to keep things simple, I'm going to try to
10 just say Prebid, but if there's any point where we need to
11 be specific about Prebid.js or prebid.org, please let me
12 know.

13 A That's fine.

14 Q Okay. So you said yesterday that publishers can use
15 this Prebid ecosystem, I think you called it, to take over a
16 process that previously had been done by the publisher ad
17 server; is that right?

18 A That's correct.

19 Q And with Prebid then, publishers can run an auction and
20 actually render the advertisement on their app or web page
21 without having to use the publisher ad server?

22 A That's not correct. You can run an auction and have
23 the winner of that auction essentially die, but in order for
24 you to get that winner into the page, you have to send that
25 winner to Google, and Google's ad server will receive that

1 ad in the line item, compare that to the other inventories
2 and instructions in the ad server, and place that on the
3 page. There is no way for Prebid to place ads on the page,
4 Prebid.js anyway.

5 Q So if you could turn to tab 1 in your binder.

6 MR. MAHR: And, Your Honor, we're just using this
7 that's a demonstrative.

8 THE COURT: All right.

9 BY MR. MAHR:

10 Q I'll represent to you, sir, that this is a page from
11 the Prebid website; do you see that?

12 A I do. Yes, I do.

13 Q And you see the title is running Prebid.js without an
14 ad server?

15 A Uh-huh.

16 Q And if you look down to the language that's in gold --
17 I'm sorry, in blue. This example demonstrates running an
18 auction and rendering without an ad server?

19 A Right.

20 Q Rendering refers to actually putting the ad on the
21 site; doesn't it?

22 A What was that?

23 Q Rendering refers to actually delivering the ad?

24 A Rendering does refer to delivering the ad.

25 Q So this example from the Prebid website shows how -- or

1 allows publishers to run an auction and render the ad
2 without an ad server; correct?

3 A Yes. That's what this says.

4 THE COURT: But are you saying in reality that
5 could not, in fact, be done?

6 THE WITNESS: That could not. It's like saying I
7 could walk to China right now, which I could, but it would
8 be very difficult.

9 All publishers have direct sold inventory, they've
10 got complex logic on the page. So if you were a tiny
11 publisher or you were experimenting, perhaps you could do
12 that. But there's no scale publisher who could possibly
13 without an ad server, because all of their page logic lived
14 on the ad server, all their direct sold inventory was only
15 visible to the ad server, and -- well, of course, Google's
16 demand is only available via the ad server because Google
17 did not participate in Prebid. So from a practical
18 perspective, there's no way for any scaled publisher to
19 operate just with Prebid.

20 Q Let's explore that, because you're saying any scaled
21 publisher, but the vast majority of publishers on the web or
22 on apps are not scaled so that they have independent sales
23 forces; right?

24 A That's correct. But apps -- Prebid didn't work on
25 apps; Prebid.js only works on web pages.

1 Q So on the web.

2 The vast majority of web publishers are not
3 massive scale websites?

4 A That's correct.

5 Q There are a lot of small to medium size businesses;
6 right?

7 A That is correct.

8 Q So if you don't have any direct inventory, like a small
9 to medium size publisher would, you could use this and
10 render the ad; correct?

11 A Not easily, because all the small websites used Google
12 exclusively as their provider, they didn't have ad servers.
13 The small websites used separate Google products. No
14 exchange could have the scale or the resources to be able to
15 contact these tiny websites. So we didn't deal with tiny
16 websites, so it really wasn't relevant.

17 Q But could the small -- not tiny, but small to medium
18 size businesses log onto prebid.org, use this JavaScript
19 to -- instead of using Google, use --

20 A Most small business owners can barely fire up a laptop
21 and get on the Internet much less run JavaScript on a web
22 page, which is fairly complicated to do. So, in theory,
23 that could happen; in reality, it did not happen.

24 Q And so this is not on -- this is on here for no reason
25 on the Prebid website; is that your --

1 A Prebid is a scientific organization. It's a bunch
2 of -- we are engineers, all of us in Prebid, and so we were
3 constantly experimenting. We would put out versions of
4 Prebid so that we could try things in the market, and that's
5 how innovation occurs is by trying things. So there was a
6 lot of things we did in Prebid that weren't necessarily
7 related to practical business purposes, but were there to
8 spark innovation. But I am not aware personally -- and I
9 was a chairman of Prebid -- of any of the websites that we
10 dealt with daily that were running their ads in this manner.

11 Q You said yesterday that the header bidding set is let's
12 not rely entirely on the ad server; let's run script on the
13 page itself so the publisher can be in control of who's
14 bidding on our inventory, not the ad servers; do you
15 remember saying that?

16 A Yes, I do.

17 Q And you also said yesterday that that was the
18 innovation that header bidding brought was this ability to
19 give publishers control over who bid, when they bid, what
20 floors they bid, instead of having that controlled by and
21 configured inside of the ad server; do you remember that?

22 A Yes, I do.

23 Q And you stand by that testimony?

24 A I do.

25 Q Now, this entire Prebid process takes place on the

1 publisher's website before Google even knows the impression
2 is becoming available; right?

3 A That's absolutely correct.

4 Q And so with Prebid, the publisher has this choice after
5 the header bidding auction either to render the ad or to
6 send it to DFP to deal with its direct, if it has direct
7 inventory?

8 A Again, I don't view that as a choice. The way it was
9 done in reality is Prebid was configured as a line item in
10 DFP, we would run our auction before Google was called, the
11 winner was selected and sent into the line item, which was
12 then processed based on the rules that DFP had. That's the
13 way it worked.

14 Q But you didn't have to send it as a line item; you
15 could send it in to have it rendered by DFP; couldn't you?

16 A Well, the way you talked to everything in DFP is via
17 line item. So you come into DFP, and if the publisher had
18 nothing else set up except for that, Google would just
19 render the page. But typically Google would check to see if
20 there was a direct sold line item.

21 If the publisher wanted AdX demand, which they all
22 did because they needed that long-tail demand. No one else
23 had that demand, nobody. So you could theoretically not use
24 AdX and bypass them, but from a revenue perspective, most
25 publishers did not want to do that. They wanted that unique

1 demand that Google AdX brought, and AdX would not bid into
2 Prebid; they would only bid via DFP.

3 Q But the publisher very much had the ability, if it
4 chose to, as you just said, to just have the ad go to DFP
5 and serve? And it's only if the publisher wanted to take
6 advantage of AdX demand, as you said, that it would set it
7 up so that you --

8 A Right. I have the option to starve to death. I don't
9 choose to take that option. I think this is the equivalent.
10 I think that in this case you could bypass the largest
11 demand pool in the industry and just go at it alone on
12 principle, but that's not advisable for a publisher because
13 they -- you want to have as much demand as possible. So I
14 don't think it was practical, at least for the members of
15 Prebid that I dealt with, to not call the ad server or to
16 just have Prebid demand only.

17 Q But I just want to make clear, because I understand
18 that fundamental to Prebid is the idea of publisher choice;
19 right?

20 A Publisher choice, yes.

21 Q And so the publisher has the choice after Prebid gets
22 the auction -- the impression first, runs its auction, the
23 publisher has the choice to take advantage of what you
24 referred to as AdX demand or not when it sends the winner of
25 the Prebid to DFP?

1 A The publisher has the choice to turn off AdX demand. I
2 am not aware of that being done ever.

3 Q But you haven't taken any kind of survey of all the
4 publishers to see how they run their ads?

5 A No, I have not personally done a survey of all
6 publishers to figure that out.

7 Q And I just want to be clear, you're not here to testify
8 on behalf of prebid.org; right?

9 A No, I am not.

10 Q And not on behalf of the Rubicon Project either?

11 A No, I am not.

12 Q The views you're sharing with the Court today, these
13 are your personal views?

14 A No, it's technically how it worked. So my view is to
15 tell you how things actually worked in the real world
16 because that's what I did. I wrote that software, I
17 administered that software, and that software works in a
18 certain way. So I'm here to just explain how it works.
19 There's no judgment.

20 Q I understand. I just mean from Tom Kershaw's
21 perspective, not from Magnite or from Prebid; correct?

22 A Yeah, that's correct.

23 Q And, personally, you're clearly a great supporter of
24 header bidding; right?

25 A Not necessarily. I'm not a supporter -- I'm a

1 supporter of transparent Open Auctions that follow
2 mathematical principles. But I'm not necessarily a huge
3 supporter of Prebid. I'm not sure what that means.

4 Q Well, if I could take you back to the 2016/2017 time
5 period when you started at the Rubicon Project.

6 A Uh-huh.

7 Q You believed at that point that header bidding had
8 changed the entire ad tech ecosystem forever; didn't you?

9 A Yes. I think header bidding and open unified auctions
10 where everybody bids at once did change the industry.

11 Q And you believed at the time that that was a good
12 thing?

13 A Yes.

14 Q And as you said on your direct, that allowed the
15 Rubicon Project to see much, much more inventory than it had
16 previously?

17 A That's correct.

18 Q And this is just a question. When I'm thinking of
19 header bidding, is it accurate to call header bidding an
20 auction of auctions, to think of it that way?

21 A Not necessarily. I mean, I consider it a unified
22 auction. These are semantic terms what you call things. I
23 considered a unified auction -- so instead of a sequential
24 auction where everyone bids, like first you bid, then I bid,
25 then the next person bids, everyone bids at once.

1 Again, the theory, the mathematics behind is that
2 if everyone bids at once, the bids go up and the total
3 dollar value in the auction increases, the publisher makes
4 more money. That's the theory behind the unified auction.

5 Q And even as a great supporter of header bidding, you
6 recognize, back in this early period, 2016/2017, that header
7 bidding had some challenges with it?

8 A Correct.

9 Q And you haven't been at the whole trial, so you don't
10 have to go into this in depth, but latency was one of those
11 challenges; right?

12 A Correct.

13 Q And you said latency is a very important part of what
14 you were doing, given that the whole thing happens in
15 250 milliseconds?

16 A Latency frames every decision, technically, that we
17 made in the industry. The industry was around latency. You
18 literally paid for things with milliseconds.

19 When you think about budgets in normal businesses,
20 it will cost me \$1,000 to buy this. The way we talked in
21 advertising was that was going to cost 10 milliseconds.
22 I've got to go find 10 milliseconds somewhere else to make
23 up for it, because if you run out of time, you literally
24 don't get a chance to be on the page.

25 Q Thank you. Thank you.

1 I want to talk about another challenge you raised
2 with header bidding that you raised in that 2016/2017 period
3 that I think Prebid was designed to address, and that is the
4 amount of resources that the Rubicon Project and other
5 exchanges had to use to integrate with other header bidding
6 exchanges before Prebid.

7 A I'm not sure I follow the question.

8 Q Do you recall back in 2016/2017 that a challenge with
9 header bidding was the amount of resources that the Rubicon
10 Project had to use to integrate with other exchanges?

11 A Yes, I do recall that.

12 Q And those other exchanges were Rubicon Project's
13 competitors?

14 A Well, actually, I shouldn't say integrate with other
15 exchanges; it was to integrate with other header bidding
16 systems that may be operated by an exchange, may be operated
17 by whomever, but each system you had to interoperate with
18 created additional resource constraints.

19 Q And before Prebid came along, these individual
20 exchanges or individual technologies had to interoperate on
21 the publisher's website in order to make header bidding
22 work?

23 A Correct. Each of them had their own competing header
24 bidding wrapper, as it's called. So that would have been
25 six different integrations we would have to do, so we wanted

1 to simplify that.

2 Q Yeah. Because in the early stage before Prebid, those
3 different header bidding wrappers had had been trying to
4 differentiate themselves from one another through their
5 proprietary header bidding technologies?

6 A Correct.

7 Q And all that differentiation created even more
8 challenges in terms of integration?

9 A Again, it wasn't really differentiation. JavaScript on
10 a page is pretty basic engineering stuff. My JavaScript
11 compared to your JavaScript, it's the same. So it was just
12 a methodology for us to be able to participate in the
13 auction. The competition happens once you're in the
14 auction. And all Prebid, or any header bidding technology
15 does, is allow you to participate in the auction. So I
16 don't view those as highly competitive, which is why nobody
17 really, you know, cared about it.

18 Q But they were -- but before Prebid, there were all
19 these differentiated wrappers, and that -- I think you said
20 at one point integrating with other exchanges had become
21 your full-time job?

22 A Yeah. I mean, that is true. Full-time job is probably
23 a little bit of an exaggeration on my part. But certainly
24 every time you have to do an integration with another piece
25 of technology, there's testing involved, there's lots of

1 work that's involved, and that was a resource sucker for us.

2 Q Understood.

3 And because you were spending so much time on
4 integration, that meant that you didn't have resources to
5 build new features for publishers at that time?

6 A That's accurate.

7 Q And you couldn't put new reporting features in place
8 for publishers at that time?

9 A The way I would put it is, it competed with other
10 features that we wanted to build in the exchange. So, yes,
11 that is accurate-ish.

12 Q And those kind of features, those are one of the main
13 ways exchanges compete with one another with the different
14 kind of features they offer?

15 A Correct. To be clear, the main way we compete is by
16 bidding the highest. In the end, it's about the dollars.
17 Right. So most of the technology we were building was to
18 optimize our bids so they were as accurate as possible. You
19 bid too high, you're leaving money on the table; you bid too
20 low, you lose. So our main job, and 90 percent of what I
21 really was doing, was trying to make sure that we bid
22 correctly.

23 Q And those features are exactly what helped you bid
24 correctly, bid more accurately?

25 A That is correct.

1 Q And so not being able to develop new features put
2 Rubicon Project at a competitive disadvantage for a period?

3 A Yes, you could argue that's true.

4 Q And this is where Prebid comes in; yes?

5 A Correct.

6 Q Because you believed that Prebid was the best way to
7 address these issues by having industry players come
8 together to create a shared infrastructure for header
9 bidding?

10 A That's correct, but I'm not convinced that the resource
11 impact on Rubicon was the main driver; the main driver was
12 standardization in transparency.

13 One of the things about ad tech that was
14 frustrating for publishers and for me was that everything
15 was opaque, it wasn't clear how things worked. And what
16 Prebid did is ended that regime and opened it up so it was
17 visible to all and created what we intended to be intending
18 to be a level playing field.

19 Q A level playing field that all the exchanges owned
20 collectively?

21 A Correct. And not the exchanges. I mean, Prebid is a
22 community organization that included publishers, buyers, ad
23 agencies and just individuals off the street. I mean, it
24 was a community organization in the truest sense of the
25 word.

1 Q Community property?

2 A Correct.

3 Q And you stated at that time that the industry's old
4 approach had been to develop this software and it's super
5 secret, and my software is amazingly different than everyone
6 else's, and you thought that was the wrong approach; right?

7 A Correct.

8 Q You thought the better approach was, let's contribute
9 our software and our thinking and our better ideas to the
10 industry and own that collectively?

11 A Yes.

12 Q And to put that vision into reality, the Rubicon
13 Project teamed up with other exchanges to create Prebid?

14 A Correct. Again, it wasn't just other exchanges; it was
15 publishers, it was any community member who wanted to join
16 was part of Prebid.

17 Q AppNexus and PubMatic, they were exchanges that were
18 cofounders with you; right?

19 A PubMatic was not a co-founder; AppNexus was.

20 Q PubMatic was an early member?

21 A They were an early member. Depends how you define
22 "early." But the cofounders were AppNexus and Rubicon.

23 Q And OpenX was a member?

24 A They were a member, yes.

25 Q Index Exchange was a member?

1 A Not until much later. Much later.

2 Q They are a member now?

3 A I believe they are, yes.

4 Q FreeWheel?

5 A FreeWheel is a video-focused ad server. They -- right

6 now -- again, I left the industry in 2021, so I'm not as up

7 to date on all of the things going on in Prebid, but as a

8 general rule, pretty much everybody is in Prebid now.

9 Q Everybody's in Prebid, including Criteo?

10 A Criteo, yeah.

11 Q You said publishers. Gannett?

12 A Gannett's in Prebid, yes.

13 Q News Corp?

14 A News Corp, yes.

15 Q And The Weather Company?

16 A Yes.

17 Q Just to be clear, not only exchanges operated -- could

18 operate header bidding wrappers; right? Could provide

19 header bidding wrappers.

20 A In most cases, the publisher ran it themselves.

21 Q The publisher can have its own wrapper and compete the

22 same way?

23 A Right. That was the intent. I mean, it was intended

24 as a publisher tool so publishers could decide who got to

25 compete.

1 Again, which JavaScript you ran on the page wasn't
2 super relevant, that just gets you in the auction where you
3 compete. It's a ticket to get in, to get on the field.

4 Q And by having the standardized collectively-owned
5 header bidding infrastructure, Prebid addressed what you saw
6 first as the problem of competitors wasting resources trying
7 to integrate with one another; correct?

8 A Again, the real issue with Prebid is creating a
9 transparent auction that we could compete in. You don't
10 compete in the -- you have to be in the auction to compete.
11 So Prebid was just saying let's all follow the same rules
12 for how the auction is going to work so that we can all
13 compete on transparent open principles.

14 Q I understand the big picture that you're conveying, but
15 I'm asking you a specific question about whether that, in
16 addition, addressed this problem of the Rubicon Project and
17 other competitors wasting resources trying to integrate with
18 one another?

19 A Yes. It allows us to take those hours and do other
20 things with them that we viewed more productive to the
21 industry.

22 Q Now, not all of the competitors in the ad tech
23 ecosystem joined onto Prebid; right?

24 A Not initially, but at this point, I think pretty much
25 everybody is in Prebid. There may be some examples where

1 they don't.

2 Q Google does not participate in Prebid; does it? It's
3 not a member?

4 A I don't believe so. I don't believe so.

5 Q Did you invite Google to the space?

6 A Yes, of course.

7 Q And they declined?

8 A Declined. Multiple times.

9 Q Multiple times. Okay.

10 And instead of joining Prebid, I think you
11 explained that Google launched a competing solution called
12 Open Bidding -- Exchange Bidding and then later Open
13 Bidding?

14 A It had many names. But yes, EBDA, Open Bidding,
15 whatever.

16 Q And Exchange Bidding was a competitor to Prebid?

17 A Right. It was an alternative way of running the
18 auction.

19 Q It was Google's competitive response to header bidding;
20 right?

21 A Correct.

22 Q And they still compete today?

23 A I believe they do.

24 Q But even without Google's participation as part of
25 Prebid, that organization is still thriving today?

1 A Correct. That is how important the unified auction is
2 to the publisher community, that they're willing to forgo
3 many things in order to have that Open Auction option.

4 Q And header bidding itself is alive and well today?

5 A It is alive and well today.

6 MR. MAHR: Your Honor, that's all I have.

7 THE COURT: All right. Any redirect?

8 MS. GARCIA: Just briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. GARCIA:

11 Q Hello again, Mr. Kershaw.

12 A Hello.

13 Q On cross, Counsel asked you about the before and after
14 development of Prebid; do you recall that?

15 A I do recall that.

16 Q Approximately what period of time was that?

17 A Before and after?

18 Q Uh-huh.

19 A Prebid was really launched in mid 2017, so prior to
20 that, header bidding was very, very -- it was uncommon, and
21 it took a year or two for it to get to, you know, any
22 noticeable adoption level. So say it was adopted at scale
23 in 2018 and '19.

24 Q So by 2018 or '19, could you describe this status of
25 the Prebid header bidding wrapper?

1 A I'm not sure I follow the question.

2 Q I'll rephrase.

3 You mentioned on cross that there were some
4 technical issues that the Prebid organization was coming
5 together to resolve; do you recall that?

6 A Yes.

7 Q By mid 2018 when you said header bidding's popularity
8 took off -- I don't mean to mischaracterize anything. But
9 by mid 2018, could you describe whether or not any of those
10 issues that you had initially undertaken at Prebid had been
11 resolved?

12 A We had resolved some, but, you know, when you're
13 running JavaScript on the page, latency will always be an
14 issue unless you can move to a server-side environment.

15 So we were continuously improving things, bringing
16 new options and features. It was all about publisher
17 controls so that they could set very tight parameters about
18 who they called and how they called them. So those were the
19 main features we developed. We were also attempting to
20 develop solutions from video and mobile app. Those were
21 less successful in the market, to be frank.

22 Q After joining Prebid, did Rubicon stop developing its
23 own new features?

24 A No.

25 Q Can you explain?

1 A We stopped trying to run auction software that had
2 nothing to do with what we did. What we did was run an
3 exchange. We received inventory from publishers and found
4 demand and put it on the page.

5 The Prebid -- what Prebid does and what EBDA does
6 was not our business, it was just the way the publisher got
7 us into the auction. So we continued to work on our
8 exchange, that was our -- that was my job was to work on the
9 exchange.

10 Q And you mentioned on cross that Prebid allowed you to
11 take certain hours and do other things with them?

12 A Correct.

13 Q What types of features did Rubicon develop with that
14 extra time?

15 A Better auction bidding, learning to determine, you
16 know, what buyers would match to what inventory so we're
17 only calling buyers for relevant inventory, better reporting
18 capabilities, the support for video, support for mobile app,
19 support for different ad size units. All these technical
20 things that you have to do when you run an exchange.

21 MS. GARCIA: Thank you. No further questions.

22 THE COURT: Any recross?

23 MR. MAHR: Nothing further.

24 THE COURT: All right. Does anybody intend to
25 call Mr. Kershaw again in the course of the trial?

1 MS. GARCIA: Your Honor, it's possible that
2 plaintiffs would like to call him for rebuttal.

3 THE COURT: All right. Then Mr. Kershaw, I'm
4 excusing you today, and you can go home. It's possible you
5 may have to come back again if you're needed for rebuttal,
6 so you'll need to make sure your contact information is
7 still accurate, and you're not to discuss your testimony
8 with any witness who has not yet testified; all right?

9 THE WITNESS: Okay.

10 THE COURT: You're free to go at this point.

11 THE WITNESS: Thank you.

12 (Witness excused at 10:06 a.m.)

13 THE COURT: All right. Your next witness.

14 MR. TESLICKO: Good morning, Your Honor. David
15 Teslicko for the United States. Plaintiffs call Chris
16 LaSala to the stand.

17 THE COURT: All right. That does mean that the
18 list of witnesses you've given me is not accurate. Unless
19 somebody gave me the wrong list, I have Mr. Boland next.
20 It's all right, I just want to make sure.

21 MS. WOOD: My apologies, Your Honor. Mr. LaSala
22 was always the designated spot this morning. That was my
23 mistake. I apologize.

24 THE COURT: All right. Is the rest of the list in
25 proper order?

1 MS. WOOD: Yes. Yes.

2 THE COURT: All right. We shouldn't have a lot of
3 confusion when the affirmation is being given to a witness.

4 Thereupon,

5 CHRISTOPHER LASALA,

6 having been called as a witness on behalf of the plaintiffs
7 and having been first duly sworn by the Deputy Clerk, was
8 examined and testified as follows:

9 (Time noted: 10:07 a.m.)

10 THE COURT: Sir, please state your full name and
11 spell your last name.

12 THE WITNESS: Christopher LaSala, L-A-S-A-L-A.

13 THE COURT: Are we ready?

14 MR. TESLICKO: Yes, Your Honor.

15 THE COURT: We need the book.

16 MR. TESLICKO: We're still handing out the exhibit
17 binders with the -- Court's indulgence for one more moment.

18 MS. WOOD: These are the depositions. We're also
19 passing out the deposition and the exhibit binders.

20 THE COURT: Are you ready?

21 MR. TESLICKO: Yes, Your Honor.

22 THE COURT: Go ahead.

23 DIRECT EXAMINATION

24 BY MR. TESLICKO:

25 Q Good morning, Mr. LaSala.

1 A Good morning.

2 Q You've already stated your name for the record.

3 Where were you employed between 2009 and 2022?

4 A Where was I employed? At Google.

5 Q And were you deposed in connection with the

6 government's investigation and litigation of this matter?

7 A Yes.

8 Q Who did you work for at the time of the first

9 deposition?

10 A Google.

11 Q At each deposition were you represented by Google?

12 A Yes.

13 Q And did you prepare for each deposition with those

14 counsel?

15 A Yes.

16 Q Those counsel also represented Google at the

17 depositions; correct?

18 A Yes.

19 Q And who paid for the attorneys that represented you at

20 the depositions?

21 A Google.

22 Q Approximately how much Google stock do you own,

23 Mr. LaSala?

24 A \$250,000.

25 Q Okay. I --

1 A Directly. Directly.

2 Q Understood, Your Honor. Or understood, Mr. LaSala.

3 A Thank you.

4 Q I want to turn to your background now.

5 You first joined Google's ad tech business in
6 2009; is that right?

7 A I don't remember the exact year that I transitioned
8 from my jobs at Google.

9 Q Was it roughly 2009?

10 A It sounds right.

11 Q Okay. And from 2013 through 2022, you were the
12 managing director for global commercialization; right?

13 A Probably.

14 Q And in that role, you were known as the global product
15 lead or the global strategy lead?

16 A Yes.

17 Q Your role focused on the sell-side of Google's ad tech
18 business; right?

19 A Yes.

20 Q And those were the AdX ad exchange product and the DFP
21 publish ad server product?

22 A Yes.

23 Q As the global strategy lead, your role and your team's
24 role was to take feedback from Google's sales team and bring
25 it to Google's product management and engineering teams;

1 right?

2 A Yes.

3 Q And it worked the other way. So you and your team took
4 information from Google's product and engineering teams and
5 brought it to the sales teams; right?

6 A Yes.

7 Q And as part of your role, you met personally with
8 publishers five or ten times a year; is that fair?

9 A Yes.

10 Q I want to focus on pricing of Google's products for a
11 few moments.

12 As the global strategy lead, you played a role in
13 setting the prices for Google's publisher ad server and
14 Google's AdX ad exchange; right?

15 A I had input.

16 Q Sorry?

17 A I had input.

18 Q You were a member of the group responsible for
19 approving discounts to the fees that Google charged for
20 those products?

21 A For some of my tenure, not all of it.

22 Q Is that roughly 2015 through 2022?

23 A I don't recall.

24 Q Is that approximately correct?

25 A It's reasonable to assume so.

1 Q Okay. And just because this comes up in the documents
2 a number of times, that group had a number of names over the
3 years; right? The group that --

4 A That approved the discounting? I don't even remember,
5 actually.

6 Q One of the names was PBSx, which stood for partner
7 business solutions cross functional; does that sound right?

8 A Yes, it does.

9 Q And at another time, that same group was called GPx or
10 google partnerships cross functional?

11 A That's correct.

12 Q For simplicity today, because there's so many acronyms,
13 you would understand if I referred to that as the discount
14 review group?

15 A Sure.

16 Q You represented the sales organization as part of the
17 discount review group?

18 A Yes.

19 Q And as part of the discount review process, you tried
20 to make sure Google didn't have a culture of discounting;
21 right?

22 A No.

23 Q Let me just confirm, Mr. LaSala. The input you
24 provided to the discount review process on behalf of sales
25 was mainly trying to make sure that we weren't -- we didn't

1 have a culture of discounting when we didn't need to; is
2 that fair?

3 A Well, the reason I answered no is it was dependent on
4 the deal that was put in front of us.

5 THE COURT: I'm sorry. You need to keep your
6 voice up. That's the microphone.

7 THE WITNESS: Is this working?

8 THE COURT: That's the microphone, so speak into
9 that.

10 THE WITNESS: Is that better?

11 THE COURT: Much better. Yeah.

12 THE WITNESS: Anyway, we can move on.

13 THE COURT: We're talking about discounts.

14 THE WITNESS: Yes.

15 MR. TEITELBAUM: I can ask the question again.

16 THE WITNESS: Yes.

17 THE COURT: All right. The culture of discounts,
18 were you trying to avoid any discounts.

19 THE WITNESS: I just -- no, I wouldn't describe it
20 as that because we offered discounts. We offered discounts
21 quite a bit for our partners.

22 BY MR. TESLICKO:

23 Q Mr. LaSala, just to confirm, the input you provided as
24 part of the sales organization as part of those discount
25 review process meetings was not to ensure Google didn't have

1 a culture of discounting when we didn't need to?

2 A I would characterize it as to not provide discounts
3 unless we needed to.

4 Q Okay. The role of the discount review process was to
5 approve or deny publisher discount requests; right?

6 A Yes.

7 Q And those were discounts from what is known as the rate
8 card rate?

9 A Yes.

10 Q The rate card rate for Open Auction transactions on the
11 AdX ad exchange was 20 percent?

12 A Yes.

13 Q And Open Auction transactions, those are the most
14 common type of transactions on the AdX ad exchange?

15 A Yes.

16 Q And that 20 percent rate card rate that Google charged
17 for AdX, that was the same for the entire time you worked on
18 the AdX ad exchange; right?

19 A Yes, the standard rate.

20 Q For about ten years; right?

21 A Yes.

22 Q And each year, publishers requested discounts to the
23 AdX ad exchange rate; right?

24 A Some.

25 Q About how many times per year would you estimate that

1 publishers asked for discounts to the AdX ad exchange rate?

2 A I would have to speculate. I don't remember. Not
3 frequent.

4 Q Okay. And those discount requests were out of the
5 thousands of publishers that used the AdX ad exchange?

6 A Yes.

7 Q But ultimately, Google did not discount the AdX fee
8 often; right?

9 A Not often.

10 Q Discounts were rare?

11 A Yes.

12 Q And overall, that meant there was minimal discounting
13 to AdX's fee?

14 A Yes.

15 Q Instead, in your experience, the AdX 20 percent take
16 rate seemed to hold?

17 A Yes.

18 Q Let's take 2017 as an example.

19 Out of the thousands of large publishers that used
20 AdX, fewer than 15 had an approved discount for Open Auction
21 transactions; does that sound right?

22 A That sounds in the ballpark.

23 Q And less than half of those actually had enough volume
24 to trigger their approved discounts; does that sound right?

25 A I'm sorry. Can you repeat the question?

1 Q Sure.

2 Less than half of the publishers that had approved
3 discounts actually had enough volume to take advantage of
4 their approved discounts?

5 A Oh, meaning the structure was such that. I don't know.

6 Q Okay. Let's take a look at the -- sorry.

7 Were you part of a joint effort that reviewed the
8 extent of discounting in 2017?

9 A I don't remember.

10 Q Okay. Let's take a look at the results of that review,
11 which are in a document. If I could ask you to look at the
12 exhibit binder in front of you and turn to the tab labeled
13 PTX 549; do you see that?

14 THE COURT: Is there any objection to 549?

15 THE WITNESS: I see it. I see it. Yes, I see it.

16 MR. ISAACSON: No objection, Your Honor.

17 THE COURT: All right. So 549 is in evidence.

18 (Plaintiffs' Exhibit Number **549 admitted into evidence.**)

19 BY MR. TESLICKO:

20 Q If you look at page 1 of that document, the
21 presentation is labeled "PBSx Discount Guidance"; do you see
22 that?

23 A Yes.

24 Q And PBSx refers to the discount review group we've been
25 discussing?

1 A Yes.

2 Q If you look at page 2 of that document, there's a notes
3 section at the bottom; do you see that? Right below the
4 slides.

5 A Yes.

6 Q And it names a number of people involved in a joint
7 effort; right?

8 A Yes.

9 Q And that includes sell-side GSL team Chris L., Pooja?

10 A Yes.

11 Q Chris L is you Mr. LaSala?

12 A Yes.

13 Q If you turn to Slide 5 which is on page 6 of the actual
14 document, it's titled "Findings From 2017 Sell-Side Rate
15 Card Review"; do you see that?

16 A Yes.

17 Q And then turn to the next page which has the results,
18 which is page 7 of the document. And if you look in the
19 middle of this slide, there's a section called "data"; do
20 you see that?

21 A Yes.

22 Q And you could also look at the screen if that's easier.
23 It's up to you, Mr. LaSala.

24 And below that data section, it reports statistics
25 for different transaction types; right?

1 A Yes.

2 Q OA is the first, and that refers to Open Auction
3 transactions?

4 A Yes.

5 Q Those are the most common transactions on the ad
6 exchange?

7 A Yes.

8 Q And next to that, the slide reports that 3,815
9 publishers are live with Open Auction transactions; right?

10 A Yes.

11 Q And only 13 LPS publishers -- and we'll come back to
12 what that means -- had exceptions to the rate card rate;
13 right?

14 A Yes.

15 Q Now, LPS refers to large publishers at Google; right?

16 A Yes.

17 Q Those are -- those large publishers are the ones that
18 would have the most negotiating leverage in negotiation with
19 Google?

20 A Yes.

21 Q And the fact that only 13 large publishers had an
22 exception to the rate card rate is consistent with discounts
23 not being given often; right?

24 A Yes.

25 Q And reading a little further over on that same row, it

1 reports that the average revenue share is 19.8 percent;
2 right?

3 A Yes.

4 Q That's .2 percent less than the 20 percent rate card
5 rate we've been discussing?

6 A Yes.

7 Q That's consistent with discounting on AdX being
8 minimal; right?

9 A Yes.

10 Q And let's look below the table, same page, but below
11 the table, to the outcome of the review; do you see that?

12 A Yes. Well, the notes?

13 Q The notes, yes.

14 A Yes.

15 Q And looking at the first item in the list, it says:
16 "For OA, there is no evidence that we need to change the
17 rate cards due to limited amount of exceptions and limited
18 amount of discounted revenue"; did I read that right?

19 A Yes.

20 Q And based on this review in 2017, Mr. LaSala, Google
21 did not change its rate card rate for AdX; correct?

22 A No.

23 Q If you could turn to Slide 12, it's page 16 of the
24 actual document. And if you look at the Bates, which are
25 the numbers in the bottom right, it's 88.

1 This slide has "recommendation" at the very top;
2 do you see that?

3 A Yep. Yes.

4 Q And looking down midway on the slide, the
5 recommendation is: "OA discounts are last resort. We are
6 holding firm on this position"; did I read that correctly?

7 A I assume you did. I can't find it. Where is it?

8 Q It's --

9 THE COURT: If you look at the screen.

10 BY MR. TESLICKO:

11 Q If you look at the screen, it might be easier.

12 A Yes. OA discounts. Yes.

13 Q Trying to help you out a little with some of these
14 documents?

15 A Yes.

16 Q "Last resort" is bolded in the original here; correct?

17 A Yes.

18 Q And the discount review group followed this
19 recommendation; right?

20 A Yes.

21 Q To make discounts on AdX a last resort?

22 A Yes.

23 Q And, in fact, you don't recall any instance in which
24 you specifically recommended discounting AdX's fee in
25 response to a publisher request?

1 A I don't remember.

2 Q Let's talk a little bit more about how Google evaluated
3 discount requests. So you can put that document to the
4 side.

5 A Okay.

6 Q When assessing a publisher's discount request, you had
7 to decide whether there was a credible threat that the
8 publisher would switch away from AdX; right?

9 A Yes.

10 Q And --

11 A Yes. Are you -- switch away? I would argue stop
12 using.

13 Q Understood, Mr. LaSala.

14 A Thank you.

15 Q You can't recall any publisher that ever completely
16 switched away from AdX during your time at Google; right?

17 A I don't recall.

18 Q And that's even though Google denied almost all
19 discount requests for AdX?

20 A That's a fair statement.

21 Q Okay. I want to shift gears a little, Mr. LaSala, and
22 talk about demand on the AdX ad exchange.

23 Now, AdX had exclusive or nearly exclusive access
24 to Google Ads advertising demand during your time at Google;
25 right?

1 A Yes. Nearly.

2 Q Publishers needed to make their inventory available to
3 AdX to reach those Google Ads advertisers.

4 A Yes.

5 Q Because it was unique?

6 A Unique, as we discussed in the deposition, is a
7 questionable term.

8 Q It's one that you used, Mr. LaSala; correct?

9 A We did use it.

10 Q Okay. And that unique demand from Google Ads is what
11 insulated Google from pricing pressure on its 20 percent AdX
12 rate; right?

13 A Not necessarily.

14 Q But it did; right?

15 A It contributed.

16 Q Okay.

17 A It contributed.

18 Q Let's look at the next document. If you could turn in
19 your binder to the tab marked PTX 624.

20 THE COURT: Is there any objection to 624?

21 MR. ISAACSON: No objection, Your Honor.

22 THE COURT: All right. It's in.

23 (Plaintiffs' Exhibit Number **624 admitted into evidence.**)

24 BY MR. TESLICKO:

25 Q This is an email exchange that includes you from June

1 of 2018; right?

2 A Yes.

3 Q And if you could turn to the second page on the email
4 chain, you sent an email on June 25th, 2018; do you see
5 that?

6 A Yes.

7 Q And in the fourth bullet of your email, you write
8 what's on the screen: "The AdX sell-side fee of 20 percent
9 holds today not because there is 20 percent of value in
10 comparing two bids to one another, but because it comes with
11 unique demand via AdWords that is not available any other
12 way."

13 Did I read that correctly?

14 A Yes.

15 Q And the 20 percent you're referring to in this email is
16 again the same 20 percent that we've been discussing for the
17 AdX ad exchange?

18 A Yes.

19 Q And that held throughout your time at Google?

20 A Yes.

21 Q Okay. And you reference AdWords in this email. Just
22 to be clear, AdWords is just another name for Google Ads?

23 A Yes.

24 Q That's Google's advertiser ad network?

25 A Yes.

1 Q Which almost exclusively bought on AdX?

2 A Yes.

3 Q And here you described Google Ads demand as unique, and
4 you started to say something on this. I want to make sure I
5 understand what that meant to you, Mr. LaSala.

6 So first Google Ads is unique partly because some
7 of the millions of advertisers only use Google Ads to buy
8 display ads; right?

9 A That would not be consistent with my assumption.

10 Only -- can you just repeat that?

11 Q Let me repeat that.

12 Some of the millions of advertisers on Google Ads
13 only use Google Ads to buy display advertising?

14 A I wouldn't know that.

15 Q You don't know one way or the other?

16 A That's fair. It's not consistent with my assumption.
17 But, no, I don't know.

18 Q Google Ads is also unique because it buys advertising
19 in a way that's different from the way other ad networks and
20 DSP's buy; right?

21 A Yes.

22 Q Google Ads buys using data available to Google; right?

23 A Yes.

24 Q Data that might be different from data used by other
25 advertiser buying tools?

1 A Yes.

2 Q And, for example, Google Ads uses contextual data to
3 buy advertising?

4 A Yes. Although I'm not an expert on how -- what data
5 they use. It wasn't my part of the business.

6 Q But you know that --

7 A That's consistent.

8 Q And contextual data, just to be clear, is data about
9 the content of a web page; right?

10 A Yes.

11 Q And part of the reason that Google Ads uses contextual
12 data is because originally it was known as a contextual
13 network; correct?

14 A Yes.

15 Q And that, in part, is because Google's search business
16 also uses contextual data for its business?

17 A Yes.

18 Q Now, Google Ads also reads the data it has, the data
19 signals it has, differently than other advertiser buying
20 tools; right?

21 A I don't -- I don't know.

22 Q Based on your experience with Google Ads, do you
23 believe that Google Ads reads signals differently than other
24 advertiser ad networks?

25 A I can't purport to be an expert on the buy-side product

1 and how it reads ads. It wasn't my product.

2 Q Mr. LaSala, you were deposed in this litigation?

3 A Yes.

4 Q Would it be helpful to look at your deposition
5 testimony to refresh your recollection about what you
6 understood?

7 A Sure. Sure.

8 Q If I could direct you to the deposition binder. This
9 is Volume 1, so it's Day 1 of your litigation. Your
10 litigation deposition. Sorry.

11 A Okay.

12 Q And if you turn to 361.

13 A Is that a page number?

14 Q Yes. Page 361. And it is behind the second tab in
15 that binder.

16 A Okay.

17 Q And if you look at line 13 on that page, you were
18 asked: "What did you mean when you used the word unique in
19 this email?"

20 A Okay.

21 Q Are you there, Mr. LaSala?

22 A 361. Yes.

23 Q 361, line 13.

24 A Yep.

25 Q You were asked: "What did you mean when you used the

1 word unique in this email?" And you responded: That the
2 demand -- skipping ahead a little "that the demand" --
3 A I see.

4 Q -- "the tool that GDN is to buy an inventory is a
5 different product than the tool that would be used by other
6 networks when buying on publisher inventory, which would
7 make it unique. It's different because it reads signals
8 differently. It might have been different like we were
9 historically a contextual network."

10 Does that refresh your recollection about Google
11 Ads buying differently than other tools?

12 A Yeah, it does. It just -- don't really know if it's --
13 you know, if it actually reads signals differently. So in
14 the flow of the conversation, I clearly said that. I'm just
15 saying I don't know.

16 Q Understood, Mr. LaSala. You can put that to the side.
17 Thank you.

18 In rounding this out, Google Ads has different
19 buying objectives than some other advertiser buying tools;
20 right?

21 A Google Ads -- probably.

22 Q Google Ads, for example, typically buys on a
23 cost-per-click basis?

24 A Oh, yes. Yes.

25 Q Other advertiser tools, like DV360, buy for a variety

1 of different objectives; correct?

2 A You're skirting outside the realm of my expertise.

3 It sounds like a reasonable assumption.

4 Q Okay. Because of all of this, Mr. LaSala, that makes
5 Google Ads advertising demand unique or special, to use your
6 terms?

7 A Yeah. I would use the word special.

8 Q And that's true even if the advertiser buying through
9 Google Ads is not unique versus every other advertiser
10 buying tool out there; right?

11 A Yes.

12 Q Okay. And because of that, even if the advertiser's
13 not unique, Google Ads spend is special for publishers;
14 correct?

15 A Yes.

16 Q Okay. Let's go back to that -- the exhibit we were
17 looking at, which is 624.

18 A Yes.

19 Q And reading from that same bullet that we were looking
20 at before, you go on to write: "AWBid puts pressure on this
21 narrative, but it is not as big a concern, because even with
22 AWBid, we can take our 32 percent"; did I read that right?

23 A Yes.

24 Q And AWBid here was just where Google Ads bought some
25 inventory outside of AdX; right?

1 A Yes.

2 Q Prior to the launch of AWBid, Google Ads didn't buy any
3 inventory outside of AdX in terms of exchanges?

4 A That's my understanding.

5 Q And even where Google allowed Google Ads to bid on
6 other exchanges, it charged a 32 percent fee; right?

7 A I don't know. That was my understanding. I don't know
8 if they charged it, per se.

9 Q That's the 32 percent reference in your email?

10 A Yeah. My assumption, which I don't know definitively,
11 is that we got 32 percent.

12 Q Okay. And the 32 percent fee you put in your email
13 here, that's more than double the fee Google Ads charges
14 when it bids into the AdX ad exchange; right?

15 A It's consistent with a network fee model, but, yes,
16 more than the ad exchange.

17 Q I just want to make sure I'm clear.

18 Google Ads, when it buys on other exchanges,
19 charges advertisers double what it charges those same
20 advertisers to buy on the AdX ad exchange; right?

21 A That's how I wouldn't characterize it.

22 (Reporter interrupted for clarification.)

23 THE WITNESS: I would not characterize it that
24 way.

25 BY MR. TESLICKO:

1 Q The fee that Google charges when Google Ads buys
2 outside of AdX is more than the fee Google Ads charges for
3 purchases on AdX; correct?

4 A That's not my understanding.

5 Q I'm understanding a different question. I'll ask it
6 again to be clear, Mr. LaSala.

7 A Okay.

8 Q And Google Ads buys inventory outside of Google on
9 other exchanges, it charges more than when Google Ads buys
10 on AdX; correct?

11 A No, I don't think that's correct.

12 Q Okay. We'll move on.

13 THE COURT: Well, explain right now so I
14 understand.

15 Why do you think that's not correct?

16 THE WITNESS: So our original network model that
17 was discussed earlier was buyers buy via Google Ads, and
18 then they pay -- excuse me, and then the tag is just on a
19 page on a publisher's website. And that, on average, we
20 would take 32 percent of the revenue that we got from the
21 advertiser and give it to the publisher.

22 When we evolved the business model to include AdX
23 at a later date -- so an exchange model -- Google Ads
24 continued to buy into that ad exchange, and then the ad
25 exchange, because it held -- it compared other demand

1 sources and ran an auction, there needed to be a stated rate
2 for all of the demand sources, and that was the 20 percent
3 stated rate.

4 So in this case -- and now, again, I don't know
5 the details, this is my understanding, but it wasn't my side
6 of the business -- when Google Ads bought in the ad
7 exchange, instead of taking the 32 percent, they took, let's
8 call it 12, such that then the 20 percent -- 20 percent ad
9 exchange rate was applied so that Google Ads, buying through
10 ad exchange to the publisher, was 32, roughly the same as if
11 they just used AdSense.

12 THE COURT: You're going to have to go over that
13 again. I don't understand that at all.

14 MR. TESLICKO: If I could ask a couple questions,
15 maybe I could draw this out, Your Honor.

16 THE COURT: All right.

17 THE WITNESS: I'm happy to Your Honor.

18 BY MR. TESLICKO:

19 Q Let's start with what's in your email.

20 When you wrote: "We can take our 32 percent,"
21 you're referring to a fee that Google charges its customers
22 of 32 percent; right?

23 A Yeah. I mean, I'm hesitating on the word "fee,"
24 because we just took the money off of -- like, there wasn't
25 a negotiation or a stated rate. We just took 32 percent and

1 then passed 68 percent through. That's how I understood it.

2 Q Okay. Let me try to use another word.

3 A But you could use the word fee if you would like.

4 Q Google took 32 percent of an advertiser's bid and kept
5 it for Google?

6 A Yes. Yes.

7 Q Okay. And when a Google Ads advertiser buys through
8 the AdX ad exchange, the fee that Google Ads takes is less
9 than 32 percent; right?

10 A Yes.

11 Q Okay.

12 A That's what I was trying to explain.

13 Q And the 32 percent that Google Ads takes when an
14 advertiser buys on another exchange, that makes that bid
15 less attractive, less likely to win an auction?

16 A Can you repeat that?

17 Q Sure.

18 If Google takes a higher fee from an advertiser's
19 bid when it bids on another ad exchange, that makes it a bit
20 less attractive?

21 A So it takes a higher fee when it bids on another ad
22 exchange?

23 THE COURT: Let me see if I understand it.

24 So there's a bidder, they're going to bid \$1. If
25 they bid the dollar on the exchange outside of Google's AdX,

1 that would be what 68 cents.

2 THE WITNESS: .68.

3 THE COURT: So that would be the offer that that
4 bidder is actually communicating?

5 THE WITNESS: That's correct.

6 THE COURT: .68, not \$1?

7 THE WITNESS: Yes.

8 THE COURT: All right. However, if the same bid
9 was going through AdX, the Google exchange, let's say it's a
10 20 percent take, it would be 80 cents that would be the bid
11 that's being reflected?

12 THE WITNESS: Well, I think it would be the 80 --
13 the 80 plus another 12, because they would take the -- they
14 would take a 12. They would -- so the buy-side still
15 took -- again, not my business, but as I understood it, they
16 took the -- a smaller take rate.

17 THE COURT: How much of a \$1 bid that's being
18 communicated across Google's exchange is going to be
19 communicated?

20 THE WITNESS: My understanding is 32.

21 THE COURT: No. No. How much of the \$1? What is
22 going to appear?

23 THE WITNESS: Oh, my understanding -- and, again,
24 I know, it would be 68 cents.

25 BY MR. TESLICKO:

1 Q And when Google Ads sends a bid to AdX, out of that \$1
2 bid 85 cents would be communicated to AdX; right?

3 A I'm sorry. Repeat that again.

4 Q When Google Ads bids on AdX, the \$1 bid from the
5 advertiser would be 85 cents, not the 68 cents in Your
6 Honor's example; right?

7 A I don't know. I don't know actually when the -- I
8 don't know when the -- all of the fees are taken in relation
9 to when the bid is placed. So I don't know.

10 Q Okay. Fair to say, though, from your email here,
11 Mr. LaSala, you didn't view AWBid as a big concern for
12 Google's competitive position; right?

13 A That's what I wrote here, but I did think AWBid was not
14 in Google's best interest.

15 Q Okay. And then finally --

16 A I was alone in that opinion.

17 Q Sorry. I didn't mean to cut you off, Mr. LaSala.

18 Finally you write here: "I think we are all in
19 agreement that exchange functionality is not worth
20 20 percent and value comes from sourcing demand"; did I read
21 that correctly?

22 A You did.

23 Q And the demand that AdX is sourcing includes unique
24 Google Ads demand?

25 A It does.

1 Q If you could turn to the next document we're going to
2 talk about, which is 612 in your binder.

3 A Okay.

4 THE COURT: Any objection to 612?

5 MR. TESLICKO: To make this easier, Google had
6 originally objected to completeness because this offers to
7 an attachment, and we also have 712 in the binder and would
8 offer that for admission at the same time if it would
9 resolve Google's objection.

10 THE COURT: Hold on a second.

11 MR. ISAACSON: I'm sorry. Your Honor, I'm trying
12 to figure out the basis of the connection between these two
13 documents. Maybe you could point it out.

14 THE COURT: Hold on. Number 1, is there any
15 objection to 612?

16 MR. ISAACSON: Well, it goes to the completeness.
17 This is talking about another document.

18 THE COURT: All right. And the other document
19 appears to be 712.

20 MR. ISAACSON: And I'm not sure why that is.

21 MR. TESLICKO: I could represent to you it's based
22 on the metadata produced. We could also not admit 712 or
23 only seek the admission of --

24 MR. ISAACSON: Why don't you ask the witness, who
25 will probably know better than I, if the comments have to do

1 with these two things.

2 MR. TESLICKO: Okay. Let's do that.

3 BY MR. TESLICKO:

4 Q Mr. LaSala, if you look at 612.

5 A Okay.

6 Q It says at the top these are comments on a sell-side
7 pricing 2.0 document?

8 A Yes.

9 Q And if you look at 712, does that appear to be the
10 sell-side pricing document?

11 A 712. I can only -- I could only guess. It's called
12 sell-side pricing strategy review, so it could be. I mean,
13 I don't remember.

14 Q Okay.

15 MR. TESLICKO: Your Honor, for right now just in
16 the interest of proceeding efficiently, we would just move
17 in 612, absent objection.

18 THE COURT: I'm going to allow 612 in. That's the
19 only one right now.

20 MR. TESLICKO: Okay.

21 (Plaintiffs' Exhibit Number **612 admitted into evidence.**)

22 BY MR. TESLICKO:

23 Q Okay. Looking at 612, Mr. LaSala, below your name at
24 the top of the first comment about midway through the block
25 of text there, you wrote: "Said more precisely, I don't

1 think there is 20 percent of value in comparing two bids.
2 AdX is not providing additional liquidity to the market; it
3 is simply running the auction. The value of our platform is
4 not in AdX; it is in other parts."

5 Did I read that right?

6 A Yes.

7 Q And the other parts you're referring to here,
8 Mr. LaSala, those are the other ad tech products controlled
9 by Google?

10 A I don't remember what I was referring here.

11 Q Continuing in that section, you suggest "we should
12 disrupt ourselves and commoditize the exchange business"; do
13 you see that?

14 A Yes.

15 Q And when something becomes commoditized, prices
16 typically fall; right?

17 A Yes.

18 Q Looking at the next block of text, toward the end you
19 write that "Google should stop continuing to extract
20 irrationally high rent from the AdX."

21 Did I read that correctly?

22 A Yes.

23 Q Rent here just refers to the fees that Google charges
24 for AdX?

25 A Yes.

1 Q That's the 20 percent fee we've been talking about?

2 A Yes.

3 Q And that's the same fee that Google continued to charge
4 through the time you left in 2022?

5 A Yes.

6 Q You go on to write: "One might ask why the market
7 continues to bear 20 percent. It may be because of AdWords
8 bringing liquidity from a long tail"; do you see that?

9 A Yes.

10 Q And long tail here refers to the large number of small
11 advertisers on Google Ads?

12 A Yes.

13 Q That's more than a million advertisers of that size on
14 Google Ads; right?

15 A I don't know, but that sounds reasonable.

16 Q And looking down at the page to the next set of
17 comments, there's some comments from Jonathan Bellack; do
18 you see those?

19 A Yes.

20 Q Now, Mr. Bellack, he was a director of product
21 management at Google?

22 A Yes.

23 Q He was the product management lead for the AdX ad
24 exchange?

25 A Yes.

1 Q And Mr. Bellack joined Google from DoubleClick in 2008
2 after the acquisition; right?

3 A It sounds right, but I don't know, but yeah.

4 Q Fair to say he had a lot of experience in these
5 products?

6 A Yes. Yes.

7 Q In his comment, Mr. Bellack agrees with you and writes:
8 "I think you are right that AdX buyers at 20 percent is not
9 long-term defensible"; did I read that right?

10 A Yes.

11 Q But Google was able to defend the rate through the time
12 you left in 2022?

13 A Yes.

14 Q You can put that document to the side.

15 Now, Mr. LaSala, you had a general understanding
16 that other ad exchanges charged lower fees than AdX; right?

17 A Yes.

18 Q You believed Google charged for AdX about two times
19 what its rivals charged?

20 A Yes.

21 Q If you look at the next document we're going to go to,
22 it's 719 in your binder.

23 THE COURT: Any objection to 719?

24 MR. ISAACSON: No objection, Your Honor.

25 THE COURT: All right. It's in.

1 (Plaintiffs' Exhibit Number 719 admitted into evidence.)

2 BY MR. TESLICKO:

3 Q Looking at 719, Mr. LaSala, this is an email exchange
4 that includes you from January of 2019; right?

5 A Yes.

6 Q Looking at your email at the bottom of the fifth page,
7 so flipping a couple of pages, you're going to want to look
8 at the Bates ending in 004; do you see that?

9 A Yes.

10 Q Mr. LaSala, there you wrote: "This statement is
11 consistent with the notion that we can only retain
12 20 percent rev share, given AdX mostly brings unique demand
13 in GDN"; did I read that right?

14 A Yes.

15 Q And GDN refers to again Google Ads; right?

16 A Yes.

17 Q Okay. You go on to write: "I'm still convinced that
18 is the only reason we can sustain 20 percent"; right?

19 A Yes.

20 Q And you didn't identify in this email, Mr. LaSala, any
21 other reason that justified the 20 percent fee Google
22 charged for the AdX ad exchange; right?

23 A I would have to read the entire email to answer that
24 question. I don't know if --

25 Q If you want to take a look in that email, do you

1 mention at any point the quality of the ad exchange at
2 processing transactions?

3 A Do you want me -- it might take five, ten minutes to
4 read the entire email.

5 Q Maybe I could focus your attention just now on the
6 email you sent on December 19th at 9 p.m. when you made this
7 statement.

8 You didn't mention in that email, Mr. LaSala, the
9 quality of the ad exchange at processing transactions, for
10 example; right?

11 A Again, I guess if you want me to read the whole email,
12 I'll read the whole email.

13 THE COURT: No, we don't have time for that.

14 THE WITNESS: Okay.

15 BY MR. TESLICKO:

16 Q You don't mention in this particular email protections
17 for publishers or advertisers; right?

18 A I haven't read the email.

19 Q Okay. But the only reason, to use your language, that
20 you identify for the 20 percent is unique demand from Google
21 Ads; right?

22 A Yes.

23 Q Okay.

24 A That's what I wrote.

25 Q Let's look farther up the email chain, so go to page 3.

1 That's the Bates ending in 002 at the bottom.

2 A Okay.

3 Q Mr. Bellack writes to you and others; do you see that
4 at 10:26 a.m.?

5 A Yes. Yep.

6 Q And he applies an attorney/client privilege legend
7 there and notes "the best" -- notes that "best practice is
8 to always get the legal POV on pricing discussions, not just
9 have them in an email"; did I read that right?

10 A That's what it says.

11 Q Was that your practice as well, Mr. LaSala, to include
12 lawyers on emails about pricing discussions?

13 A I don't remember specifically whether it was a practice
14 or not a practice.

15 Q You don't remember one way or the other whether you
16 included lawyers on pricing discussion emails?

17 A Yeah.

18 Q Looking to the body of Mr. Bellack's email, he also has
19 a numbered list that continues onto the next page, and the
20 first item on that list I want to direct your attention to.

21 The first item in the list says: "Get Ad Manager
22 OA rev shares in line with market value. Could still be
23 higher than competition, but shouldn't be double the price."

24 Did I read that right?

25 A Yes.

1 Q And Ad Manager OA rev shares here means that same
2 20 percent fees that Google charges for the AdX ad exchange?

3 A Yes.

4 Q And Mr. Bellack is saying Google shouldn't charge twice
5 the price of competitors; right?

6 A That's what it says.

7 Q Meaning he understood at the time based on this email
8 that competing exchanges charged 10 percent, roughly?

9 A I don't know what he understood or didn't understand,
10 but that's what he wrote.

11 Q Well, we'll turn to your email now then on the first
12 page of the document.

13 You write on January 4th, and you also apply a
14 privilege legend; do you see that?

15 A Yes.

16 Q And this email is still about pricing; right?

17 A Yes.

18 Q Does that refresh your recollection about your practice
19 of applying attorney/client privilege legends to emails?

20 A Well, you asked me a specific question about pricing,
21 not a generic question about when I apply attorney/client
22 privilege. And, in this case, I don't remember this, but if
23 someone else did it, I typically just added it as well.

24 Q You typically copy/pasted attorney/client privileged
25 legends from one person's email into your own email; right?

1 A Yeah. That would be a practice if it started that way,
2 without thinking about it too much.

3 Q Under Item 2 in your list you write: "My summary POV
4 is a sell-side rev share should probably top out at
5 10 percent for OA, comparing two bids with layers of
6 protection."

7 Did I read that right?

8 A I did. And even as we're through this now, I've added
9 layers of protection as part of the value to the comparing
10 of the two bids. So, yes, I did add better value.

11 Q Okay. And I want to get to the layers of protection,
12 but just to confirm, rev share here means the AdX fee that
13 Google charges; right?

14 A Yes.

15 Q And your point of view is that the fee Google should
16 have charged topped out at 10 percent?

17 A That's what I wrote.

18 Q Versus the 20 percent Google actually charged?

19 A That's what I wrote.

20 Q Okay. And that's consistent with Mr. Bellack's view
21 that we looked at in a prior email; correct?

22 A Yes.

23 Q Now, when you refer to layers of protection here,
24 you're referring to things like ad fraud and malware
25 protections; right?

1 A I don't remember writing this email, but that could be
2 part of it, yeah.

3 Q Well, what else is covered by layers of protection?

4 A Well, there's brand protection, so make sure that the
5 ad shows up against good content. I guess there is malware,
6 there's fraud. And fraud being defined as, like, is the
7 impression even real or is it some sort of click farm or
8 garbage content. I mean, I'm far removed from this
9 business.

10 Q And in your email here in January 2019, your view was:
11 "Comparing two bids with all those layers of protection you
12 just described should still probably top out at 10 percent";
13 right?

14 A That's what I wrote.

15 Q Okay. I want to quickly spend a few more minutes on
16 your use of a privilege legend here.

17 On this email chain, you did not ask any questions
18 of counsel specifically; right?

19 A I would have to read it again to know, but --

20 Q Do you recall reading this email at your deposition,
21 Mr. LaSala?

22 A I don't know. I mean, I might have. I'm just saying.

23 Q Okay. That's fine.

24 MR. TESLICKO: Your Honor, we're done with this
25 document.

1 One minor housekeeping matter. For purposes of
2 the record, we would also like to move in Plaintiffs' Trial
3 Exhibit 700, which is in your binder. It's just another
4 version of the same emails we've been talking about, but
5 it's almost fully redacted, and we think it's important to
6 have that as part of the record.

7 THE COURT: Hold on a second. So 700 is the
8 redacted version of 719? Is that what you're saying?

9 MR. TESLICKO: It contains many of the emails from
10 719, but they're redacted in 700; they're not redacted in
11 719.

12 THE COURT: So 700 is the item that you want on
13 your website tomorrow for a public review?

14 MR. ISAACSON: Your Honor, I --

17 MR. ISAACSON: I would object, Your Honor. What
18 he's pointing to is the document was produced once with
19 redactions, and then redactions were removed, and it was
20 produced again later. And so taking -- just making a point
21 of that for the point of the public is irrelevant.

22 MR. TESLICKO: Just to clarify my request, Your
23 Honor we seek admission of both 700 and 719. 700 to show
24 that a number of emails were redacted for attorney/client
25 privilege in one version of the document, but not the other,

1 and those correspond to the privilege legends that
2 Mr. LaSala applied to those emails and that Mr. Bellack
3 applied to those emails.

4 MR. ISAACSON: That has nothing --

5 THE COURT: I'm going to sustain the objection.

6 MR. TESLICKO: Fine, Your Honor.

7 THE COURT: Just 719 is in.

8 (Plaintiffs' Exhibit Number **719 admitted into evidence.**)

9 BY MR. TESLICKO:

10 Q Mr. LaSala, notwithstanding that both you and
11 Mr. Bellack -- let me move on in the interest of time.

12 Now, Mr. LaSala, when Google collects a fee for
13 its ad tech products, that means less of the money paid by
14 an advertiser for a transaction ultimately makes it to the
15 publisher; right?

16 A Yeah. When any demand source collects a fee, yes.

17 THE COURT: I'm sorry. I couldn't hear the
18 answer.

19 THE WITNESS: When any demand source collects a
20 fee, yes.

21 BY MR. TESLICKO:

22 Q More of the money goes to what's called the middle, or
23 middlemen; right?

24 A Yes.

25 Q The middle includes ad tech intermediaries like Google?

1 A Yes.

2 Q And Google's ad tech products that act as the middle
3 include Google's advertiser ad network?

4 A Yes.

5 Q Google's DSP, DV360?

6 A Yes.

7 Q The ad exchange?

8 A Yes.

9 Q And the public ad server?

10 A Yes.

11 Q We've mostly been talking about the AdX fee, but each
12 of those products charges a fee when a transaction flows
13 through them; right?

14 A Yes.

15 Q And you would agree that Google has taken an outsized
16 share of advertisers' money before it reaches publishers;
17 right?

18 A I know that showed up in a deposition and I wrote that
19 statement.

20 Q Okay. Let's look at your statement.

21 Do you agree with that statement first?

22 A Can I look at the statement again?

23 Q Sure. Let's go to the statement. 864 in your binder.

24 PTX 864.

25 MR. TESLICKO: And we would offer PTX 864 for

1 admission.

2 THE COURT: Is there any objection?

3 MR. ISAACSON: No objection.

4 THE COURT: All right. It's in.

5 (Plaintiffs' Exhibit Number **864 admitted into evidence.**)

6 BY MR. TESLICKO:

7 Q Now, this, Mr. LaSala, is an October 2019 chain with
8 you and a number of senior executives at Google; right?

9 A Yes.

10 Q Yes. Looking at the third page of the email chain,
11 there is an email from Prabhakar Raghavan, and he's
12 responding to a news article that was distributed by Kent
13 Walker.

14 Now, Kent Walker was Google's president of Google
15 affairs; right?

16 A Yes.

17 Q And Mr. Raghavan was the senior vice president for ads
18 and commerce; right?

19 A Yes.

20 Q And that means Mr. Raghavan was the individual
21 responsible for search, display, video advertising,
22 analytics, shopping, payments, travel, all of those
23 businesses at Google?

24 A I think so. I don't know what he covered.

25 Q Mr. Raghavan wrote: "Until we find a better way to

1 articulate to the world that we're not hanging on to an
2 outsize chunk of money, there will continue to be this noise
3 from publishers"; do you see that?

4 A Yes.

5 Q Let's turn to your email on the first page now at
6 9:01 a.m.

7 A Yes.

8 Q You copy in in-house counsel, Ted Lazarus, and label
9 the document privileged and confidential; right?

10 A Yes.

11 Q This is the email chain about the fees charged by ad
12 tech intermediaries; right?

13 A Yes.

14 Q You don't see any request for attorney/client advice on
15 here?

16 A I would have to read the whole document.

17 Q Okay. You can skip that for now.

18 You provide some detailed thoughts on this
19 important issue, and you write: "There is a continued call
20 from buyers and publishers for transparency. It is
21 reasonable and should not be dismissed because the middle
22 takes more share of the marketers' dollars than the content
23 producer."

24 Did I read that right?

25 A Yes.

1 Q And the middle here again refers to intermediaries like
2 Google's ad tech tools; right?

3 A Yes.

4 Q Skipping ahead you write: "In the lowest scenario, it
5 is 50 cents on the dollar, probably more."

6 Did I read that right?

7 A Yes.

8 Q And what you're saying here is that before the
9 advertiser's money reaches the publishers, the middle takes
10 more than half. That's what you wrote?

11 A I'm sorry. You didn't just read my statement, so can
12 you repeat the question?

13 Q What you're saying here, Mr. LaSala, is that before the
14 advertiser's money reaches the publishers, the middle takes
15 more than half?

16 A Yes. That's what I'm saying.

17 Q In the lowest scenario?

18 A That's what I'm saying here.

19 Q And skipping ahead, you continue: "I half agree with
20 Prabhakar's point." That's referring back to Mr. Raghavan;
21 right?

22 A That's what I wrote.

23 Q "The middle does take an outsized share, and we are
24 only part of the middle. Yet, one could argue that when we
25 are the middle for both buy and sell-side, we are taking an

1 outsized share."

2 Did I read that right?

3 A You did, even though my email has some sloppy mistakes
4 in it.

5 Q Do you correct your mistakes in a subsequent email
6 here, Mr. LaSala?

7 A No. Just specifically saying, like, Prabhakar's point,
8 the middle takes an outsized share, where actually Prabhakar
9 said they don't. But, anyway, that's -- I don't know if
10 that's relevant.

11 Q And Mr. LaSala --

12 A And then I say one could argue versus one does.

13 Q Mr. LaSala, when you wrote "we are only part of the
14 middle," the "we" there is Google; right?

15 A Yes.

16 Q You go on to write on the next page: "It is
17 questionable that 20 percent for OA is reasonable
18 long-term"; do you see that?

19 A Yes.

20 Q And that's the 20 percent fee for AdX that we've been
21 talking about?

22 A Yes.

23 Q Same AdX fee that, in fact, was sustainable for the
24 long term during your time at Google; right?

25 A I'm sorry. I was reading. Can you repeat the

1 question.

2 Q Sure.

3 The same 20 percent fee that, in fact, was long
4 term sustainable during your time at Google?

5 A I'm sorry. You're asking -- repeat the question again.

6 Q Sure. The 20 percent referred to here is the same
7 20 percent --

8 A Oh, yes.

9 Q -- fee that held for the entire time you were at
10 Google?

11 A Yes. Yes.

12 Q And going back to the document, you wrote: "Pubs
13 accept it because it brings demand, Google Ads. If Google
14 Ads bought everywhere else, I think we would see pubs move
15 to other SSPs for OA, and we'd lose the 20 percent."

16 Did I read that right?

17 A Yes.

18 Q And Mr. LaSala, in October of 2019, you believed that
19 if Google Ads bought freely on other exchanges, SSPs, Google
20 could no longer charge the 20 percent fee for AdX; right?

21 A I'm sorry. Repeat the question.

22 Q Sure.

23 In October of 2019, you believed that if Google
24 Ads bought freely on other exchanges, referred to as SSPs,
25 Google could no longer charge the 20 percent fee for AdX?

1 A So I wrote that, but I don't think the data suggested
2 it was an accurate perspective. This is all perspective.

3 Q Google, in fact, never allowed Google Ads to buy freely
4 on all other exchanges during the time you were at Google;
5 right?

6 A They were increasing the rate of buying of AWBid off
7 exchange.

8 Q Google Ads was never allowed to buy everywhere else;
9 right?

10 A I don't know.

11 Q Okay. And, finally, under the "my POV" bullet, you
12 wrote: "To the extent we want to be in the pipes biz, DV3
13 and/or Ad Manager, we should accept downward pressure unless
14 we can tie our buy and sell-sides together to create unique
15 differentiated value to buyers and sellers."

16 Now, the bolding here appears in the original;
17 right?

18 A Yes.

19 Q Okay. And Google did exactly what you said here;
20 right, Mr. LaSala? It tied together its buy-side, Google
21 Ads; and its sell-side, DFP, via the AdX ad exchange; right?

22 A No, it didn't, as much as I was -- I was articulating a
23 perspective that it would be better -- on all of these
24 documents that we continued to sort of make the same point
25 ad nauseam.

1 But the backdrop is, it was my personal opinion
2 that there was longer-term value for Google specifically if
3 we sort of focused our business almost where we began as a
4 tightly controlled closed ad network instead of buying into
5 an open -- sort of an open marketplace. So I was always
6 advocating for that position. So, in my perspective, we
7 weren't, especially DV3. DV3 did whenever they wanted. And
8 AWBid, Google Ads did whatever they wanted.

9 So I was almost alone in the position that we
10 should sort of move away from this sort of -- this
11 complicated ad tech business and move back towards a closed
12 network model where we were seeing like real competition
13 from Amazon, specifically, and Facebook Audience Network,
14 specifically, because it's my belief that it's the power of
15 the data plus the power of the -- of what you do with the
16 data that really drives long-term value for advertisers and
17 publishers.

18 So for all of this, the backdrop and the nuance
19 that's not sort of coming out of this discussion is, I
20 didn't like this business, right, so I was trying to
21 influence us to do something else.

22 Q I want to make sure I understand the point you had
23 there.

24 You advocated for additional restrictions on where
25 Google's publisher customers could sell their inventory;

1 right?

2 A Yeah. I advocated for that, to which I was strongly
3 rejected, sometimes emotionally, by the owners of the
4 buy-side of the business that said my opinion wasn't really
5 necessary.

6 Q And as global strategy lead, you also pushed for more
7 restrictions on where Google's advertiser customers could
8 buy publisher inventory; right?

9 A That was my, yeah, perspective, which, again, the
10 people that made those decisions didn't really appreciate my
11 perspective.

12 Q Okay. Let's shift gears now. We've mostly been
13 talking about the impact of the connection between Google
14 Ads and AdX.

15 I want to turn now to a different aspect of the
16 case, and that's the connection between the AdX ad exchange
17 and Google's publisher ad server, DFP.

18 A Okay.

19 Q So Google's ad exchange provided real-time bids for
20 publisher inventory on DFP; right?

21 A Yes.

22 Q Real-time bidding is valuable, was valuable to
23 publishers?

24 A Yes.

25 Q And Google used exclusive access to that -- those

1 valuable real-time bids from AdX to pull publishers onto DFP
2 and lock them in; right?

3 A No.

4 Q Okay. Let's look at a document in your binder.

5 A I just want to be, like, clear on that.

6 DFP was an ad server. So I don't know -- we'll go
7 to whatever document.

8 Q Yeah. There's no question pending right now,
9 Mr. LaSala. If we could just look at the document.

10 A Okay.

11 Q I think you answered my question.

12 PTX 114.

13 A PTX.

14 Q And we would seek to admit this document into evidence.

15 THE COURT: Any objection?

16 MR. ISAACSON: No objection.

17 (Plaintiffs' Exhibit Number **114 admitted into evidence.**)

18 BY MR. TESLICKO:

19 Q Now, Mr. LaSala, this is a September 2012 email from
20 Marc Theermann, and he was the head of mobile platform
21 sales; right?

22 A Yeah. I guess I'll just read it here. I'm having
23 trouble finding it. Go ahead. I'll just read it here.

24 THE COURT: Right at the beginning of the book.

25 THE WITNESS: Thank you. Thank you so much.

1 Okay.

2 BY MR. TESLICKO:

3 Q I'll ask again, Mr. Theermann, Marc Theermann, he was
4 the head of mobile platform sales?

5 A I don't remember what his title was at this time. He
6 had a couple of jobs.

7 Q In his email, Mr. Theermann notes he's concerned about
8 three things, and the third of those is: "While I know I
9 might be in the minority, I would like to stress that I
10 think it is too early to give AdX to non-XFP partners"; do
11 you see that?

12 A Can I see that? Yeah.

13 Q And XFP is just another acronym for DFP; right?

14 A I think so.

15 Q Mr. Theermann is writing this about three years after
16 Google acquired AdX and DFP from DoubleClick; right?

17 A I don't know the timing, but it sounds reasonable.

18 Q Roughly accurate?

19 A Sure.

20 Q Okay. Mr. Theermann goes on to write: "This is an
21 amazing time to lock in impressions by offering XFP to
22 publishers with full AdX Dynamic Allocation. AdX can serve
23 as a tool to pull publishers on to XFP."

24 Did I read that right?

25 A You did.

1 Q And full AdX Dynamic Allocation, that refers to
2 real-time bids from AdX; right?

3 A Say that again. I'm sorry.

4 Q Sure. Full AdX Dynamic Allocation that Mr. Theermann's
5 referring to here, that just refers to real-time bids from
6 AdX; right?

7 A I'm sorry. I'm just trying to -- I'm half listening
8 and half reading, so I apologize to the Court for doing
9 that.

10 So just one more time. So I'm in paragraph C?
11 Where am I? Start me over.

12 Q Sure. You don't have to look at the document for this,
13 Mr. LaSala. It's just a question about a term.

14 A It's not written --

15 Q It is in the document, but I'm asking you based on your
16 experience at Google.

17 Full AdX Dynamic Allocation, that typically, in
18 Google's business, refers to real-time bids from AdX; right?

19 A Well, even when you said full -- Dynamic Allocation in
20 AdX business, is that how you said it? Because Dynamic
21 Allocation was a feature in the ad server, not in AdX, as I
22 understood it. So I guess I'm just sort of factually
23 confused about your question, which is why I'm struggling.

24 Q Okay. We can move on, Mr. LaSala.

25 Mr. Theermann also writes: "By allowing third

1 parties to integrate with AdX mobile web app, we are giving
2 away this advantage"; do you see that?

3 A Okay. Yep. I see it.

4 Q Now, Google's ad server had an advantage as compared to
5 third-party ad servers because it, alone, had access to
6 real-time bids from AdX; right?

7 A So I don't know. Because I do remember that AdX bought
8 into -- directly onto a publisher's page, and it bought into
9 some third-party ad servers.

10 Q You have no reason to believe that AdX provided
11 real-time bids to third-party ad servers; right?

12 A I don't know.

13 Q If we look a little down, Mr. Theermann mentions
14 another advantage. He writes: "Dynamic Allocation allows
15 AdX to see all XFP impressions" -- those are DFP
16 impressions; right? And he goes on to say: "We lose this
17 advantage behind other ad servers"; do you see that?

18 A I do.

19 Q And via first look, AdX was able to see and bid in real
20 time on publisher impressions via DFP; right?

21 A I don't remember how --

22 Q You don't remember how --

23 A -- first look worked, or even Dynamic Allocation, for
24 that matter.

25 Q And, finally, Mr. Theermann writes: "Ad servers are

1 sticky and hard to replace"; do you see that?

2 A Yes.

3 Q And that's consistent with your experience, Mr. LaSala,
4 that publishers rarely, if ever, switched publisher ad
5 servers?

6 A It was a heavy lift to change. They did, but it was --
7 wasn't easy.

8 Q You can't recall any publisher ad server that
9 switched -- sorry. I'll say that again.

10 You can't recall any publisher that switched away
11 from Google's DFP publisher ad server; can you?

12 A I can only think of one because it was -- I think they
13 did. That was contentious. But there might have been more.
14 I can remember one.

15 Q Who is that, Mr. LaSala?

16 A It was Disney, I think, made a decision to move away.
17 I think they built their own.

18 Q And Disney continued to use Google's DFP for display
19 ads; right?

20 A I don't remember.

21 Q You don't remember either way?

22 A I don't, no.

23 Q Okay. Shifting gears a little, publishers using the
24 AdX ad exchange, they have contracts with Google; right?

25 A Yes.

1 Q They're bound by Google's publisher guidelines?

2 A Yes.

3 Q And those guidelines prohibited publishers from putting
4 AdX bids into real-time competition with other sources of
5 demand within rival ad servers; right?

6 A I don't remember.

7 Q You don't remember either way?

8 A No.

9 Q Okay. To refresh your recollection, and we're going to
10 move it into evidence, can you look at PTX 118.

11 THE COURT: Any objection to 118?

12 MR. ISAACSON: No objection.

13 THE COURT: All right. It's in.

14 (Plaintiffs' Exhibit Number **118 admitted into evidence.**)

15 BY MR. TESLICKO:

16 Q Mr. LaSala, this is another email involving you and
17 Mr. Theermann and others in the ad tech business; right?

18 A Yes.

19 Q And per the subject of this email, Mr. Theermann's
20 writing you about a meeting with Bonita. Bonita is likely
21 Bonita Stewart; correct?

22 A Yes.

23 Q Bonita was the vice president for global partnerships
24 and responsible for large publishers?

25 A Yes.

1 Q Looking at the second page of the email, and it's not
2 Bates 323 at the bottom, Mr. Theermann wrote to you -- or
3 wrote, not to you: "We are saying that AdX cannot be called
4 from any third-party SSP and yield management system, and,
5 in consequence, AdX mobile cannot be called from third-party
6 mobile ad servers that incorporate these functionalities."

7 Did I read that right?

8 A You did.

9 Q Now, you're familiar with yield management technology;
10 right, at a high level?

11 A At a high level, yeah.

12 Q Yield management technology is just technology that
13 allows publishers to optimize across different sources of
14 advertising demand?

15 A Yes.

16 Q And that allows them to figure out where the best place
17 is to sell their publisher inventory; correct?

18 A Yes.

19 Q Publisher ad servers have yield management systems;
20 right?

21 A Yes.

22 Q And because yield management technology -- and that's
23 because yield management technology is important to
24 publishers?

25 A Yes.

1 Q Now, looking back at the document, Scott Spencer
2 writes: "These restrictions are in the existing contract.
3 It's just a case of making it clear to sales what
4 constitutes compliance"; do you see that?

5 A I see that, yes.

6 Q Who's Mr. Spencer?

7 A He was a product manager for the ad exchange.

8 Q Familiar with the ad exchange and its policies?

9 A Presumably.

10 Q And the restriction Mr. Spencer is talking about here
11 refers to the restriction that AdX cannot be called by a
12 publisher using a third-party ad server with yield
13 management functionality; right?

14 A I think that's what it says.

15 Q And that was found in Google's contract with publisher
16 customers; correct?

17 A I don't know. That's just what it states here, but I
18 can't attest to it.

19 Q Okay. Let's shift gears to a different topic,
20 Mr. LaSala.

21 Now, there was general alignment within Google
22 that the primary objective of Google's sell-side business
23 was to provide access for Google's buy-side business; right?

24 A There was a robust debate about that, and we oscillated
25 back and forth.

1 Q Let me ask for your view.

2 In your view, the primary objective of Google's
3 sell-side business was to provide access for Google's
4 buy-side business; right?

5 A In my utopic, forward-looking view, I don't remember
6 the details, but it would have been reasonable that I would
7 have espoused that opinion.

8 Q And because you espoused that position, you pushed for
9 Google to design its ad tech products to be only as open as
10 Google needed them to be; right?

11 A I don't know that it was designed that way, but we were
12 debating whether it should be.

13 Q Contrary to your view, Google's DSP, DV360,
14 historically was relatively open; right?

15 A Yeah.

16 Q It bought publisher inventory, both on AdX and --

17 A I'm sorry, the DS -- which was relatively open?

18 Q Sure. I'll clarify.

19 Google's DSP, DV360, was relatively open?

20 A Yes. Yes. Yes.

21 Q And that's because DV360 bought inventory on AdX and
22 other ad exchanges; right?

23 A Yes.

24 Q And as a result after header bidding became a thing,
25 Google's DV360 bought inventory on rival ad exchanges that

1 was made available through header bidding; right?

2 A Yes.

3 Q And in doing so, DV360 was indirectly supporting header
4 bidding in your opinion?

5 A Yeah.

6 Q But you viewed header bidding as an existential threat
7 to Google's ad tech business; right?

8 A The entire ad tech business, not just ours.

9 Q If you could go to 433 in your binder. I should
10 clarify, PTX 433.

11 THE COURT: Any objection to 433?

12 THE WITNESS: Yes.

13 MR. ISAACSON: No objection.

14 THE WITNESS: Oh, sorry. I'm sorry.

15 THE COURT: I like it.

16 THE WITNESS: I didn't -- that was funny, and I
17 didn't even mean it to be.

18 MR. ISAACSON: Feel free to come on over here.

19 THE WITNESS: I was going to say, are you going to
20 hire me? I object to all of this.

21 (Plaintiffs' Exhibit Number **433 admitted into evidence.**)

22 THE COURT: By the way, since we're having a
23 break, it is mid-morning, we should take our mid-morning
24 break.

25 MR. TESLICKO: Yes, Your Honor.

1 THE COURT: We'll be in break until 11:30.

2 (A recess was taken.)

3 MR. TESLICKO: Thank you, Your Honor.

4 THE COURT: I think we were at Exhibit 433.

5 MR. TESLICKO: Correct, Your Honor.

6 BY MR. TESLICKO:

7 Q Welcome back, Mr. LaSala.

8 We were turning to document PTX 433. Do you see
9 that in your binder or on the screen?

10 A Yes.

11 Q This is an email you sent your boss, Jason Spero, in
12 December of 2016; is that right?

13 A Yes.

14 Q And in that email you set out the 2017 sell-side
15 priorities?

16 A Yes.

17 Q And the very first of those is AdX value update and
18 header bidding and FAN response; do you see that?

19 A Yes.

20 Q And you wrote: "Need to fight off the existential
21 threat posed by header bidding and FAN"; right?

22 A Yes.

23 Q Now I want to make sure I understand what you meant
24 here.

25 You viewed header bidding as an existential threat

1 to Google's ad exchange business; right?

2 A To all ad exchange businesses.

3 Q You viewed header bidding as an existential threat to
4 Google's publisher ad server business, too; right?

5 A I don't think so.

6 Q And header bidding was an existential threat to
7 Google's publisher ad server business because it moved part
8 of the decision-making function outside of the ad server;
9 right?

10 A Again, this is -- we're, like, pushing ten years on
11 this. But I think you still need an ad server to serve an
12 ad after it is -- after, like, whatever happens in the
13 header happens. I think you still need an ad server.

14 Q You still need an ad server; right?

15 A Yeah.

16 Q Okay. Now, you also mentioned FAN here.

17 FAN refers to the Facebook Audience Network;
18 right?

19 A Yes.

20 Q And you're aware that FAN no longer even buys open web
21 display advertising; right?

22 A Yeah.

23 Q They exited the market some years ago?

24 A Yes.

25 Q Okay. Going back to the statement in 2017, you viewed

1 fighting off header bidding as your personal Number 1
2 priority for the year; right?

3 A Yes. That's what I wrote.

4 Q And you believed that if we do nothing else, this needs
5 to be an all hands-on-deck approach.

6 Did I read that right?

7 A Yes.

8 Q And that meant that everyone in Google's ad tech
9 business needed to be involved?

10 A No. The context for this email is for marketing
11 resources, so I'm asking for support from our marketing team
12 to help us. And we were historically an under-resourced
13 division in terms of marketing resources, so I was
14 desperately trying to get marketing resources.

15 Q You felt that people on Google's sell-side business
16 should be involved in the response to header bidding?

17 A Yeah.

18 Q And employees working on the buy-side of Google's ad
19 tech business needed to be involved in the response to
20 header bidding; right?

21 A That's fair.

22 Q Now, you understood, Mr. LaSala, that header bidding
23 was a response to Google's dominance; right?

24 A No.

25 Q Okay. Let's look at the next document in your binder,

1 which is PTX 0254.

2 THE COURT: Any objection to 254?

3 THE WITNESS: What was it, 254?

4 MR. ISAACSON: No objection, Your Honor.

5 THE COURT: All right. It's in.

6 (Plaintiffs' Exhibit Number 254 admitted into evidence.)

7 BY MR. TESLICKO:

8 Q Correct, 254. Either on your binder or on the screen.

9 Your preference, Mr. LaSala.

10 This is an October 2015 email chain that involves
11 you and others from Google's ad tech business; right?

12 A I'm sorry. Can you ask the question again?

13 Q Sure. This email involves you and others from the
14 Google ad tech business; correct?

15 A Yes.

16 Q And it begins with an email from someone named Lisa
17 Lehman; do you see that? Apologies if I misstated her name.

18 A Okay. Yes.

19 Q She was the strategic partner lead for news and
20 magazine, at least based on the signature block at the end
21 of her email?

22 A Sure.

23 Q And Ms. Lehman joined Google from Rubicon, what is now
24 the Magnite ad exchange; right?

25 A I don't know.

1 Q If you look at page 2 of the email, it references this.

2 Does that refresh your recollection of where
3 Ms. Lehman came from?

4 A Can you show it to me on the screen?

5 Q Sure. It's the second block of text at the very top of
6 the document. Lisa joined my team from Rubicon. Above
7 that.

8 A Okay. Noted.

9 Q And looking at still page 2 of the document but going
10 down to Ms. Lehman's email, she wrote about midway down:
11 "Right now we are the de facto preferred ad server of choice
12 for 90 percent of publishers"; do you see that?

13 A Okay. Yep.

14 Q And Google's publisher ad server was DFP; right?

15 A Yes.

16 Q And Ms. Lehman goes on to write: "By having that, we,
17 A, have a relationship with all pubs; B, get to see all
18 their inventory, even that which we don't monetize; C,
19 almost always give AdX demand access to their inventory; and
20 D, maybe even allow AdX first look at every single
21 impression."

22 Did I read that right?

23 A You did.

24 Q At least items B through D in Ms. Lehman's list, that
25 refers to the first look advantage that Google had afforded

1 its AdX ad exchange; right?

2 A I don't know the details of first look. I think we
3 covered this.

4 Q D specifically refers -- uses the words "first look";
5 right?

6 A Yeah. Yeah.

7 Q Looking a bit down the page talking about header
8 bidding, Ms. Lehman writes: "By invalidating the need for
9 an ad server, we are setting the stage for Google to
10 actually have to compete alongside the SSPs (or whatever
11 these platforms are called) for any access to any publisher
12 inventory in the future."

13 Did I read that right?

14 A You did.

15 Q And SSP is just another word for an ad exchange;
16 correct?

17 A Yes.

18 Q Prior to header bidding, AdX didn't need to compete
19 against real-time prices from rival ad exchanges; right?

20 A Say that again. That's what she wrote, or are you
21 asking me?

22 Q I'm asking you based on your experience in the
23 industry.

24 Prior to header bidding, AdX did not need to
25 compete against real-time bids from other ad exchanges;

1 right?

2 A I believe that's true.

3 Q Ms. Lehman -- going back to the document, Ms. Lehman
4 goes on to write: "And will be disadvantaged at that point.
5 Unlike our competitors, pubs have been viewing us as a
6 necessary evil instead of a responsive innovative partner,
7 so they're eager to find out how to cut us out all
8 together."

9 Did I read that right?

10 A You did.

11 Q And you agreed with Ms. Lehman; right?

12 A I don't remember this email exchange at all.

13 Q Let's look at the very top of that document,
14 Mr. LaSala.

15 You send a response to the email thread; correct?

16 A Correct.

17 Q And you start that email response with: "Great
18 writeup"?

19 A I do.

20 Q Okay. Putting aside the document for a moment.

21 Mr. LaSala, you, too, thought that Google had
22 gotten to the point where it was so big it was hard to
23 innovate quickly; right?

24 A Like, as a generic proposition?

25 Q I'm asking you, Mr. LaSala.

1 You, too, thought that Google, as of this time,
2 had gotten to the point where it was so big, it was hard to
3 innovate quickly?

4 MR. ISAACSON: I'll object to the "you, too."

5 THE WITNESS: Yeah. I mean, are you reading
6 something from an email that you told me --

7 THE COURT: That's a minor point. The question is
8 to this witness.

9 MR. TESLICKO: I could rephrase, Your Honor.

10 BY MR. TESLICKO:

11 Q Mr. LaSala, you thought that Google had gotten to the
12 point where it was so big it was hard to innovate quickly;
13 right?

14 A Are you reading it from an email that you -- that you
15 just told me to stop reading?

16 Q I'm asking if that was your view, but if it would be
17 helpful, we could go to your deposition testimony where you
18 gave a similar statement to refresh your recollection.

19 A I don't know if we're asking, like, a specific
20 question. But the generic statement is, as companies grow,
21 it gets harder to move fast. So I would contend with that,
22 and, in Google, it was harder to move quickly.

23 Q And, by contrast, smaller companies at that time were
24 able to innovate more quickly because of their size; right?

25 A That seems like an academic conversation, like, in

1 theory if they had the resources.

2 Q Putting aside whether it's academic or not, you agree
3 with that statement; right, Mr. LaSala?

4 A It's a reasonable statement in general.

5 Q Okay. Ms. Lehman wasn't alone in expressing her views
6 about Google as a non-responsive partner for publishers;
7 right?

8 A I don't remember.

9 Q Okay. Let's turn to the next tab, PTX 238.

10 MR. TESLICKO: And we would move this document
11 into evidence as well.

12 MR. ISAACSON: Any objection?

13 THE COURT: I would object to the portion of the
14 document that's quoting an article that's hearsay within
15 hearsay, but other than that, I have no objection.

16 MR. TESLICKO: And, Your Honor, we're not seeking
17 to admit the portion of the document that reports on -- that
18 relays a news article for the truth of the matter, only for
19 context and effect on the listener.

20 THE COURT: I'm allowing it in for the effect,
21 because it's within the context of this, but not for the
22 truth of anything within it. So it's in.

23 Go ahead.

24 (Plaintiffs' Exhibit Number 238 admitted into evidence.)

25 BY MR. TESLICKO:

1 Q Mr. LaSala, this is an email exchange involving you and
2 others in Google's ad tech business in June of 2015; right?
3 Or, sorry, August 2015.

4 A I think I have the right one. So this is an email
5 exchange between -- say that again.

6 Q You and others in Google's ad tech business.

7 A I don't know if it's between. I can't say if I was,
8 like, just copied on it or if I, you know -- I mean, you
9 could tell me and we could save some time today. Did I
10 contribute to this email?

11 Q We could put aside that question and just go to the
12 substance of the email.

13 A Okay.

14 Q If you look at page 4 of the document with the Bates
15 ending in 610, there's an email from Michelle Sarlo
16 Dauwalter. Again, apologies if I misstated her name.

17 She sends an email to the group; right?

18 A Okay. Yep. I see it.

19 Q And she was the global director for programmatic
20 account strategy at the time; does that sound right?

21 A Yes.

22 Q And discussing the rise of header bidding, she wrote:
23 "If we are committed to competition and we believe
24 competition drives revenue, we should allow for all sources
25 of demand to compete fairly in real time, or as close to

1 real time as possible."

2 Did I read that right?

3 A Yes.

4 Q And at this point in time in 2015, Google did not allow
5 publishers using DFP to have all sources of demand compete
6 fairly; right?

7 A So I don't remember the timing and when features were,
8 but the way you even just phrased that, all sources of
9 demand did compete fairly in AdX and DFP.

10 And just to be clear, so we're talking about ad
11 exchanges competing with each other. So the reason I
12 answered that way is that DSPs and ad networks buying to ad
13 exchanges, and all of those DSPs competed fairly in the ad
14 exchange. There's another question about whether then those
15 ad exchanges competed against each other. So it's a
16 different question.

17 Q Okay. Within the DFP publisher ad server in 2015, all
18 exchanges did not compete in real time; right?

19 A Exchanges, correct.

20 Q Okay. And at that time, Google had a first-look
21 advantage as well or a last-look advantage over other
22 exchanges; right?

23 A I don't recall the details of first and last look.

24 Q And at this point in time, Google did not allow
25 publishers to -- sorry.

1 Publishers could only obtain real-time pricing
2 from AdX if they used the Google publisher ad server; right?

3 A We did have a product called AdX direct where you could
4 just put AdX as a tag on your page. So it's very fuzzy for
5 me, it's been a while, so I don't know if that statement is
6 entirely accurate.

7 Q Okay. And you don't recall if AdX direct provided
8 real-time pricing to publishers using non-Google ad servers;
9 right?

10 A I don't know.

11 Q Okay. Ms. Dauwalter goes on to write: "While I can
12 help our sales team build a story around latency and lost
13 impressions when trying to build waterfalls and header
14 bidding, the fact remains that if we allowed for real-time
15 competition across all demand sources, we wouldn't even need
16 to have that conversation."

17 Did I read that right?

18 A You did.

19 Q And in response to header bidding, Google's sales team
20 pushed stories about latency; right?

21 A I don't have any recollection of that.

22 Q You don't remember Google saying -- pushing out stories
23 about the latency associated with header bidding?

24 A Well, just the way you phrased the question. We
25 definitely thought that header bidding increased latency on

1 the page, and that was a problem, and the publishers should
2 know.

3 Q And Google pushed out stories about lost impressions
4 caused by header bidding; right?

5 A I don't know what you mean by story. Like, narrative?

6 Q Okay. She goes on to write: "If all demand sources
7 competed fairly, we could start stripping away the
8 waterfalls, would immediately gain more access to inventory,
9 make more money for publishers, increase ad viewability and
10 engagement, and ultimately make the Internet a better
11 place."

12 Did I read that right?

13 A You did.

14 Q And you agree with Ms. Dauwalter that real-time
15 head-to-head competition was better for publishers?

16 A Well, that statement she doesn't even say that.

17 Q Okay. Do you agree that real-time head-to-head
18 competition is better for publishers?

19 A For demand sources.

20 Q Real-time head-to-head competition is better for
21 advertisers?

22 A Yeah. For DSPs and networks, yes.

23 Q And better for Internet users as a whole?

24 A Not for exchanges.

25 THE COURT: I'm sorry. I didn't hear the last

1 question.

2 THE WITNESS: I said -- I'm just being clear on my
3 perspective. It's just kind of a wonky way to get at my
4 opinion.

5 But I believe that a real-time auction exchange
6 between the owners of, like, the demands -- so Google Ads,
7 we were talking about DV3 and other DSPs buying into an
8 exchange and have all of their demand is good for the
9 ecosystem.

10 When all of those demand sources then buy into
11 multiple exchanges -- which is what they did. So each of
12 those demand sources would buy, for the most part, demand --
13 into those different exchanges. And then what I'm
14 suggesting is that taking the output of all of those
15 auctions and then comparing them again isn't necessarily
16 good for the ecosystem, and that's what header bidding was
17 doing in its incarnation.

18 BY MR. TESLICKO:

19 Q I want to turn now, Mr. LaSala, to some of Google's
20 responses to header bidding.

21 One of those responses was to launch Exchange
22 Bidding or what became known as Open Bidding; right?

23 A Yes.

24 Q And we can just quickly look at a document that
25 generally discusses the purposes of Exchange Bidding, that's

1 PTX 444.

2 THE COURT: Any objection to 444?

3 MR. ISAACSON: No objection.

4 THE COURT: All right. It's in.

5 (Plaintiffs' Exhibit Number 444 admitted into evidence.)

6 BY MR. TESLICKO:

7 Q Looking on the first page of this document, Mr. LaSala,
8 you explain the reason Google built Exchange Bidding. You
9 write: "The reason we are building this, namely to move
10 pubs away from HB and into EB."

11 Did I read that right?

12 A If you could just show me where it is.

13 Q Sure. It's in your email of January 4th, 2017 midway
14 through that paragraph. It's the paragraph that starts --
15 or the email that starts with "I agree with Max."

16 A I agree with Max. Okay.

17 Okay. Yes. I see it.

18 Q And here, HB is header bidding?

19 A Yes.

20 Q EB is Exchange Bidding?

21 A Yes.

22 Q And because of this view -- or because of this reason
23 for building Exchange Bidding, in your view -- let's turn to
24 page 7 toward the bottom. In your view, the Holy Grail of
25 Exchange Bidding --

1 MR. ISAACSON: I'm sorry. I don't have --

2 MR. TESLICKO: Bates 652. I'll start over.

3 BY MR. TESLICKO:

4 Q Looking at 652, in your view, Mr. LaSala: "The Holy
5 Grail of Exchange Bidding was the impact of EB on the
6 reduction of HB."

7 Did I read that right?

8 A Yes, you did.

9 Q And because of that, you asked others at Google to
10 track the success of header bidding -- or of Exchange
11 Bidding by tracking the decline in header bidding on other
12 exchanges; right?

13 A On other exchanges? I mean, it's reasonable to think
14 that I was looking to track the decline in header bidding.

15 Q And, in fact, if we go back to the first page to the
16 same email we were looking at before, the one with "I'm okay
17 with the 100 million."

18 A Yes.

19 Q You ask -- you suggest that Google track the decline in
20 header bidding; right?

21 A I don't know that I asked that somewhere.

22 Q It's the second-to-last line of your email at 2:04 p.m.

23 A Yes. Okay. I see it. Yeah.

24 Q Okay. And that's how you thought Google should measure
25 the success of Exchange Bidding; right? The decline in

1 header bidding?

2 A Yes. I didn't think it was a very good product.

3 Q You didn't ask in this email to track how much Exchange
4 Bidding increased publisher yields overall?

5 A In this email, I don't know if I did.

6 Q You didn't ask anyone to track whether Exchange Bidding
7 improved the quality of ad matches; right?

8 A I'll assume the answer is no without reading it. I
9 don't know. I'd have to read the whole email.

10 Q Okay. Put that document aside for a second,
11 Mr. LaSala, just to ask one question.

12 In order to attract more exchanges to participate
13 in Exchange Bidding, Google offered to share AdX's last look
14 with those exchanges; right?

15 A I don't remember.

16 Q Going back to 444, if you could go to the sixth page.

17 THE COURT: Again, what's the Bates stamp for
18 that?

19 MR. TESLICKO: Sure. The Bates ending in 651.

20 THE COURT: Thank you.

21 BY MR. TESLICKO:

22 Q And Mr. Giles there sends an email. Who is Mr. Giles
23 or Giles?

24 A He was an engineer.

25 Q Was he the director of ad serving? Does that sound

1 right?

2 A That sounds right.

3 Q Okay. Mr. Giles wrote: "Jerome re last look, there
4 are several important reasons why we will be moving forward
5 with testing in the open beta. One, because both publishers
6 and exchanges have very strongly complained about the
7 fairness of it."

8 Did I read that right?

9 A Yes.

10 Q And I know you said you didn't remember the details,
11 but do you remember generally that last look refers to the
12 ability of AdX to see the winning header bidding bid before
13 running its own auction?

14 A No.

15 Q You have no recollection at all about what last look
16 was?

17 A No.

18 Q Okay. And you had heard, Mr. LaSala, publishers in
19 exchanges complaining about last look at least; right?

20 A We had a product called first look and a product called
21 last look. It's reasonable that -- based on this
22 conversation, that, yeah, that would have come across my
23 desk then.

24 Q Mr. Giles adds: "This was one of the biggest
25 objections raised in the recent EB steering committee

1 meeting with exchanges. If we want exchanges to give up HB
2 and move to EB, we need to give some concessions."

3 Do you see that?

4 A I do.

5 Q And that concession that Google ultimately made was to
6 share last look with exchanges that participated in Exchange
7 Bidding; right?

8 A I don't recall.

9 Q Okay. Look at Number 3 in Mr. Giles' email. He wrote:
10 "It creates a clear differentiation between EB and HB.
11 Exchanges that go through HB are subject to last look, and
12 those that go through EB are not. This gives a pretty big
13 incentive to switch."

14 Did I read that right?

15 A You did.

16 Q Does that refresh your recollection about Google's
17 sharing last look with Exchange Bidding partners?

18 A Not at all.

19 Q Okay. In response to -- you can put that document to
20 the side, Mr. LaSala.

21 In response to header bidding, Google also
22 adjusted the way that its advertiser buying tools purchased
23 ad inventory; right?

24 A I don't know.

25 Q Do you recall that DV360 adjusted how it bid for

1 publisher inventory in response to header bidding?

2 A I don't recall.

3 Q Okay. Let's look at a document, 613. PTX 613 in your
4 binder.

5 A Okay.

6 MR. TESLICKO: And we would seek admission of this
7 document, Your Honor.

8 THE COURT: Any objection to 613?

9 MR. ISAACSON: No objection.

10 THE COURT: All right. It's in.

11 (Plaintiffs' Exhibit Number **613 admitted into evidence.**)

12 BY MR. TESLICKO:

13 Q This is a June 2018 email exchange that includes you on
14 the email; right? Here on the to line.

15 A Yes.

16 Q Look at the first page. You ask in Number 2: "Can we
17 see how much the growth of EB is coming from DBM through
18 EB?"

19 Do you see that?

20 A I do.

21 Q And you asked that because you were concerned that
22 DV360 was buying inventory on rival ad exchanges rather than
23 AdX; right?

24 A I don't remember this email.

25 Q Okay. And you go on to write: "With my Google hat on,

1 the right answer is not to do something different with EB
2 and ask our sales team to jump through hoops, but rather
3 suggest that DBM stop buying on 3PEs when they know they can
4 see the impression in AdX."

5 Did I read that right?

6 A Yes.

7 Q And you were suggesting here with your Google hat on
8 that DV360 stop buying on third-party exchanges?

9 A Well, what I was suggesting is that I thought header
10 bidding -- back to existential threat, header bidding was
11 such a poor product for users, as it added increased latency
12 to the page for marketers whose ads would then go through
13 this subpar technology, and likely over time be sort of less
14 effective, and less value to the publisher in the long term
15 because of the poor experience. And so for the ecosystem, I
16 thought no one should buy via header bidding.

17 So my suggestion was again to -- for the buy-side
18 was, look, if you care about the ecosystem and you can get
19 access to the inventory other ways, just get access to it
20 other ways because this is not a great piece of technology.
21 So that was sort of my perspective. Again, I didn't have
22 any say what they did.

23 Q Let me ask more specifically, Mr. LaSala.

24 Your suggestion here was that DV360 stop buying on
25 third-party exchanges if that inventory could be found at

1 all on AdX; right?

2 A That's what I wrote.

3 Q Okay. And you suggested that rather than asking Google
4 sales team to jump through hoops to make Exchange Bidding
5 more attractive?

6 A I didn't say that.

7 Q Well, you wrote, Mr. LaSala -- you were suggesting --

8 A I used the word more attractive.

9 Q I'm just asking you a question. I'll rephrase the
10 question.

11 Mr. LaSala, here you said: "The right answer is
12 not to do something different with EB and ask our sales team
13 to jump through hoops."

14 A I did say that.

15 Q Do you see that?

16 A Yes.

17 Q Your recommendation is you didn't want the sales team
18 to have to jump through hoops; right?

19 A That's what I wrote, but I don't remember this email.

20 Q You thought it was better for DV360 to just stop buying
21 on third-party exchanges?

22 A That's what the sentence says. I don't remember this.
23 I'm not sure what he's asking.

24 Q That plan, in fact, was implemented in part through
25 what was called Project Poirot; right?

1 A I don't remember the details of Poirot.

2 Q Okay. Do you remember that DV360 bid shade on
3 third-party exchanges?

4 A No.

5 Q Mr. LaSala, as of 2016, Google's AdX ran a modified
6 second-price auction; right?

7 A I don't remember. I don't remember the details of how
8 the auction ran.

9 Q Do you remember that it did not run a pure second-price
10 auction as of 2016?

11 A No.

12 Q Okay.

13 A I just don't know either way.

14 Q Okay. That's fine. Let's look at a document in your
15 binder, PTX 317.

16 THE COURT: Any objection to 317?

17 MR. ISAACSON: No objection.

18 THE COURT: All right. It's in.

19 (Plaintiffs' Exhibit Number 317 admitted into evidence.)

20 BY MR. TESLICKO:

21 Q Looking at this March 2016 email, you wrote in the
22 middle of page 1 in the first page of the document: "First
23 and foremost I would like to work with PM buy/sell to look
24 at how we would communicate the reality that our auction
25 acts as a modified second-price auction."

1 I read that right?

2 A Yes, you did.

3 Q And you're talking about AdX here; right?

4 A Yeah.

5 Q And you go on to explain why, in March of 2016, AdX was
6 a modified second-price auction. You wrote: "It was
7 because of 'things like RPO, dynamic rev share and boost in
8 OPA'"; do you see that?

9 A I do.

10 Q RPO is reserve price optimization? Does that sound
11 right?

12 A It sounds right.

13 Q OPA is optimized Private Auctions?

14 A That sounds right.

15 Q And RPO, dynamic revenue share, and boost in OPA in
16 your view, in March of 2016, all have the impact of
17 optimizing the second-price auction -- sorry, the second
18 price in some way. That's from the document; do you see
19 that?

20 A Yes. Yep.

21 Q Which made AdX a modified second-price auction?

22 A Yes.

23 Q Okay. You can put that document to the side.

24 I want to turn now, Mr. LaSala, to one final
25 topic, and those are your communication practices at

1 Google --

2 A Okay.

3 Q -- and what you did or didn't do after the Department
4 of Justice began its investigation.

5 So let's start with some basic facts. You
6 received a litigation hold for this matter on October 4th,
7 2019; right?

8 A Yes.

9 Q Okay. And if you turn to the last page in your -- last
10 tab in your exhibit binder, this is the litigation hold that
11 we received yesterday, I believe, from Google.

12 MR. TESLICKO: And I defer to the Court's
13 practice, but we could simply label this as the last
14 PTX number in our sequence, if the Court's amenable to that.

15 THE COURT: Well, in your total sequence.

16 MR. TESLICKO: In our total sequence. I believe
17 it would be PTX 1857.

18 THE COURT: All right. 1857 is the currently
19 redacted litigation hold which may be subject to review
20 since I understand there's going to be a motion filed.

21 MS. WOOD: Yes, Your Honor.

22 THE COURT: All right.

23 BY MR. TESLICKO:

24 Q And I understand Google has some confidentiality
25 concerns with email addresses on the screen, so we're not

1 going to put the email address portion on the screen. But
2 if you could look in your binder at the document, do you see
3 your email address on the litigation hold email of
4 October 4th, 2019?

5 A Yes.

6 Q Okay. Mr. LaSala, do you view your former email
7 address at Google as confidential for any reason?

8 A I've never thought about it. Can I say I don't know?

9 Q Okay. And if you look at the small portion of this
10 email that's unredacted, it informed you that the U.S. House
11 of Representatives Judiciary Committee, the Department of
12 Justice Antitrust Division, and a coalition of state
13 attorneys general had launched investigations of Google's
14 search and advertising products; do you see that?

15 A Yes.

16 Q And it instructed you, if we go to the -- farther down
17 in the document, that if you did use chats to discuss any
18 topic covered by the hold, to "make sure the settings
19 preserve the messages such as switching to history on for
20 chat"?

21 A Yes.

22 Q Do you see that?

23 A I do.

24 Q Do you remember receiving this litigation hold back in
25 October 2019?

1 A I do.

2 Q Okay. And close in time to receiving the litigation
3 hold, you also received training from counsel; right?

4 A I don't know the distance between receiving it and the
5 training.

6 Q It would be fair to say it was close in time; right?

7 A I don't know.

8 Q If you could -- if it would be helpful, I can refresh
9 your recollection with your litigation deposition in which
10 you recall that it was close in time.

11 Do you want to look at your litigation --

12 A I trust you. Sure.

13 Q If you turn to litigation deposition --

14 A I was just saying I trust that it's accurate.

15 Q Sorry. I misheard you, Mr. LaSala. Apologies.

16 A Okay.

17 Q And at that training, you were informed you needed to
18 toggle history on to preserve a chat; right?

19 A My recollection was that we were instructed if we were
20 going to speak about the business topics in chat, we should
21 do it with history on or just use email and other forms of
22 communication.

23 Q And you understood, based on that training and this
24 litigation hold, that the default for chat was history off;
25 right?

1 A Yes, sir. Yeah. That's how I used it for about a
2 decade. Whenever it was created.

3 Q And you found the instructions you were given to turn
4 history on to be logistically complicated; right?

5 A Well, you had to change it for every individual chat.

6 Q Could you explain that a little bit more, Mr. LaSala?

7 A Well, if you started a chat with someone, the way I
8 understand it, there's no way to be an all default on or all
9 default off. I could be wrong, but it was each one, I
10 think.

11 Q And to make sure I understand your understanding --

12 A Yes.

13 Q -- was that by default, history was off for chats;
14 right?

15 A That's my understanding, yes.

16 Q And that meant the chats were destroyed after a short
17 period of time, absent some intervention by you; right?

18 A I didn't know what it meant that it was destroyed. In
19 fact, I assumed everything on the Internet was just kept.

20 Q You assumed that even after --

21 A No. No. Just in general. Like a general concept.

22 Q Okay. I want to be really precise here.

23 After the litigation hold in October of 2019 and
24 the training you received --

25 A Yes.

1 Q -- you understood that by default, the history for
2 chats was history off; right?

3 A Yes.

4 Q Okay. And that meant that chats were not preserved;
5 right?

6 A Yes.

7 Q And you understood that to preserve a chat, you had to,
8 for each chat, toggle history on; right?

9 A Yes.

10 Q Otherwise the chat would be lost; right?

11 A Yes.

12 Q Okay. And you found the burden of switching history on
13 for every single chat that related to business
14 communications to be logistically complicated; right?

15 A On a daily basis, yeah.

16 Q Sorry. What was your answer?

17 A Yes.

18 Q By February of -- you can put that document to the
19 side.

20 A Okay.

21 Q And just so the record is very clear, your
22 understanding was you couldn't change history on for all
23 chats going forward in time; right?

24 A I didn't know that I could if I could.

25 Q Okay. Based on your understanding, you thought you had

1 to switch history on for each individual chat?

2 A That's how I used it. I don't know that I had an
3 understanding.

4 Q By February 2020, Mr. LaSala, you were part of the ads
5 working group for U.S. competition investigations; right?

6 A I don't recall.

7 Q If you could look at Document 925 in your binder,
8 PTX 925.

9 A Yeah.

10 THE COURT: Any objection to 925?

11 MR. ISAACSON: No objection.

12 THE COURT: All right. It's in.

13 (Plaintiffs' Exhibit Number **925 admitted into evidence.**)

14 BY MR. TESLICKO:

15 Q If you look at the subject of that email, Mr. LaSala.

16 A Yes.

17 Q It says ads working group U.S. competition
18 investigations; right?

19 A Yes.

20 Q And this is you sending an email to your boss, Jason
21 Spero?

22 A Yes.

23 Q You write in your email -- putting that aside.

24 Does this refresh your recollection that by
25 February 2020, you thought you might have to testify as part

1 of the U.S. antitrust investigation?

2 A Well, I don't remember this email, but it says it in
3 here.

4 Q Okay. If you look at the third bullet, which is me,
5 that's you; right, Mr. LaSala?

6 A Yeah. Right. That's what I'm suggesting, yeah.

7 Q It says: "Reviewing response to ensure I agree with
8 all the content so that if I'm asked to testify, I do not
9 contradict our answers"; do you see that?

10 A Yeah.

11 Q In February 2020, did you think there was a chance you
12 would have to testify in a U.S. antitrust investigation?

13 A I don't remember this email.

14 Q All right. And according to the email, you were
15 spending 15 to 20 percent of your time reviewing responses
16 to antitrust investigators; isn't that right?

17 A That's what it says. Now I'm following. Okay. Yeah.

18 Q Now, Mr. LaSala, you're familiar with something known
19 as communicate with care at Google; right?

20 A Vaguely.

21 Q Sorry?

22 A Vaguely.

23 Q And in light of the Department of Justice's
24 investigation, you reminded others at Google to communicate
25 with care; right?

1 A I might have.

2 Q Okay. Let's look at PTX 927.

3 THE COURT: Any objection to 927?

4 MR. ISAACSON: No objection.

5 THE COURT: All right. It's in.

6 (Plaintiffs' Exhibit Number 927 admitted into evidence.)

7 BY MR. TESLICKO:

8 Q This is an email, Mr. LaSala, you sent on February 6th,
9 2020; right?

10 A Yes.

11 Q You sent it to a number of people at Google?

12 A Yes.

13 Q About four months after you had received a litigation
14 hold?

15 A Yes.

16 Q And the same month that you had sent the prior document
17 we just looked at that talked about your work on the ads
18 working group for U.S. competition investigations; right?

19 A Yes.

20 Q And you address this email to a sell-side leads.

21 Who were those?

22 A They were probably the leaders of each of the
23 cross-functional teams that worked on the sell-side.

24 Q That included people with the title vice president;
25 right?

1 A Yes.

2 Q Okay. And you write in the email, the third bullet --
3 second bullet. Sorry.

4 A Yes.

5 Q "Reminder to always communicate with care and review go
6 competition and go five rules"; do you see that?

7 A I do.

8 Q And that refers to Google's Communicate With Care
9 policy; right?

10 A I don't know.

11 Q Did you ever use the phrase communicate with care to
12 refer to something other than Google's policy related to
13 Communicate With Care?

14 A I don't remember writing this email, and I don't even
15 know if I authored it. Like, I might have sent it, so I
16 don't know.

17 Q Okay. And you reference go five rules. We don't need
18 to spend time on that, I understand that was admitted into
19 evidence yesterday.

20 Let's look at the very end of your email here.

21 You write: "Also a good reminder to teams to stick to our
22 scripts"; do you see that?

23 A Yes.

24 Q What was the script, Mr. LaSala?

25 A I have no recollection of this email.

1 Q No recollection of any script in response to the DOJ
2 investigation referenced in the subject line of this email?

3 A No recollection.

4 Q Okay. If you could flip to PTX 1777.

5 THE COURT: Any objection?

6 MR. ISAACSON: I'm sorry, what number?

7 MR. TESLICKO: 1777.

8 THE WITNESS: I can't find it.

9 MR. TESLICKO: It might be stuck behind another
10 tab. They're in numerical order, so 1777 might be right in
11 front of 1818.

12 MR. ISAACSON: No objection.

13 THE COURT: It's in.

14 (Plaintiffs' Exhibit Number 1777 admitted into evidence.)

15 BY MR. TESLICKO:

16 Q If you could turn to the third page of that document,
17 it's got the title of the presentation. And I'll represent
18 to you that this is a training presentation which explains
19 the wonky format.

20 A Okay.

21 Q You'll see that the training deck is titled "You Said
22 What Ten Things to Ensure You Are Communicating With Care."

23 A Okay.

24 Q You could feel free to flip through.

25 Does this look like a reproduction of the

1 Communicate With Care training you received when you were a
2 Google employee?

3 A It doesn't look familiar.

4 Q Sorry?

5 A I don't remember it.

6 Q Does it look familiar at all?

7 A Not specifically, but -- I mean, I know I did these
8 sort of online trainings, so ...

9 Q And you did receive Communicate With Care training at
10 some point during your time at Google; right?

11 A I don't remember. I assume I did.

12 Q Okay. You can put that document to the side,
13 Mr. LaSala. I want to turn to how you personally
14 communicated.

15 So in the course of your work at Google, you used
16 the chat function all the time; right?

17 A Yeah, I did, as a sort of ...

18 Q And it would be fair to say that you used chat and
19 email interchangeably to conduct business at Google; right?

20 A I don't know about interchangeably. I used chat more
21 for hallway-like conversations. Like, I used it as an
22 environment where -- an environment where we would sort of
23 exchange ideas, and, you know, shoot the, you know,
24 so-to-speak. Even so much I remember when I first started
25 that I used to put in my chat -- I don't know if you can do

1 it anymore -- like an intro that says in hallway.

2 Q Mr. LaSala, are you answering the question I asked? I
3 feel like you answered it a while ago.

4 A What was the question?

5 Q Let me ask a more specific question.

6 Is it your testimony today that it would not be
7 fair to say you used chat and email interchangeably to
8 conduct business at Google?

9 A I used them quite a bit, all of them, but my degree of,
10 like -- like, the more specific I wanted to be, the more I
11 used email on the documentation.

12 THE COURT: I'm sorry. What was that answer?

13 THE WITNESS: Meaning like on a continuum, chat
14 was, like, mostly quick hit sort of things. Email was like
15 reasonably well thought out but still could be wonky,
16 sloppy. And then documentation would be the most thoroughly
17 constructed. That's what I was trying to communicate.

18 THE COURT: And documentation would be a
19 standalone document?

20 THE WITNESS: Exactly. Like a slide deck or a
21 Word document.

22 BY MR. TESLICKO:

23 Q Mr. LaSala, if you could pick up the deposition binder
24 behind you, Volume 1 and turn to the tab for lit depo Day 1.

25 A Which page?

1 Q Page 387 in the lit depo Day 1 tab.

2 And just to confirm, you testified under oath when
3 you were deposed in this matter; right?

4 A Yes. What page again?

5 Q 387, line 2 through 5.

6 A Okay.

7 Q And if you could read it to yourself as I read it.
8 Were you asked the following question and gave the following
9 answer: "Is it fair to say you used chat and email
10 interchangeably to conduct business at Google?" Answer:
11 "Yeah. Interchangeably."

12 A Okay.

13 Q Is that right?

14 A Yes, I said that.

15 THE COURT: Yeah. But if you read the whole
16 answer, it's not inconsistent with what he said.

17 He goes on to say: "The more structured I thought
18 something needed to be, I would drop it into an email or
19 document. And the more -- I don't know, chat was more like
20 quick hit type stuff, not, like, long."

21 I mean, that's not good impeachment, in my view.

22 MR. TESLICKO: Understood, Your Honor.

23 BY MR. TESLICKO:

24 Q Can I ask a follow-up question, which is: Was the
25 substance of chat similar to the substance of your email

1 communications?

2 A Yes.

3 Q Okay. Now, sometimes you used chats for topics that
4 were too sensitive for email; right?

5 A I wouldn't characterize it --

6 Q Okay. Let's look at another document in your exhibit
7 binder. So if you could pass that one up and turn to
8 PTX 992.

9 THE COURT: Any objection to 992?

10 MR. ISAACSON: No objection.

11 THE COURT: All right. It's in.

12 (Plaintiffs' Exhibit Number **992 admitted into evidence.**)

13 BY MR. TESLICKO:

14 Q Mr. LaSala, this is a chat record from September of
15 2020 with you and Mr. Nash Islam; do you see that?

16 A Yes.

17 Q Who was Mr. Islam?

18 A He worked for me.

19 Q He was a subordinate that reported to you?

20 A Yes.

21 Q Okay. In this chat you're discussing IDFA consent
22 issues; do you see that at the very top?

23 A Yes.

24 Q Those relate to the targeting events?

25 A Yes.

1 Q Okay. And in the chat, Mr. Islam wrote at the bottom
2 of the first page: "Should I send an email to Duke and
3 Naomi right now on this?"; do you see that?

4 A Yes.

5 Q And Mr. Islam goes on to write a few lines down: "Or
6 too sensitive for email so keep on ping"; do you see that?

7 A Yes.

8 Q And ping is a term used within Google to refer to chat;
9 right?

10 A Yes.

11 Q Okay. And you respond: "Start a ping with history
12 turned off"; do you see that?

13 A Yes, I do.

14 Q That means start a new chat with the history setting
15 off; correct?

16 A Yes.

17 Q And this was nearly a year after you received a
18 litigation hold in this matter; correct?

19 A Yes.

20 Q Okay. If you could turn to another chat, which is
21 PTX 1818.

22 A Yes.

23 Q This is another chat with Mr. Islam from August 2020
24 this time.

25 A Yep.

1 THE COURT: All right. Wait. Is there any
2 objection to 1818?

3 MR. ISAACSON: No objection.

4 THE COURT: All right. It's in.

5 (Plaintiffs' Exhibit Number **1818 admitted into evidence.**)

6 BY MR. TESLICKO:

7 Q This is, again, taking place almost a year after you
8 received a litigation hold in this matter; right?

9 A Yes.

10 Q And in this chat on the first page at 11:53:16,
11 Mr. Islam raises what he calls burning issues with a
12 multi-call launch; do you see that?

13 A Yes.

14 Q Multi-call refers to an ad tech product being called
15 multiple times for a single impression; right?

16 A Yes.

17 Q He goes on to write at 11:53:39 that there will "likely
18 be VP escalations on the issue"; right?

19 A Yes.

20 Q Only significant issues within the ad tech business got
21 raised to the VP level; right?

22 A We didn't waste their time.

23 Q And at 11:54:27, he explains the multi-call launch
24 could have "major negative impact to a number of off
25 platform pubs."

1 Did I read that right?

2 A Yes.

3 Q And then turning to page 3 at 13:03:18.

4 A Yes.

5 Q You write: "Also maybe start an off-the-record ping
6 with Duke, you, me, about this."

7 A Yes.

8 Q An off-the-record ping thread is an off-the-record
9 chat; right?

10 A Yes.

11 Q And Duke -- I'm sorry, I got ahead of myself.

12 Duke -- who does Duke refer to?

13 A He was a product manager.

14 Q Sorry?

15 A He was a product manager in the business.

16 Q He was a director of product management, in fact?

17 A Yeah.

18 Q He was heavily involved in Google's ad tech business;
19 right?

20 A Yes.

21 Q At the time, was he also involved in working on
22 responses to the U.S. antitrust investigation of Google

23 A I don't know who received that letter.

24 (Reporter interrupted for clarification.)

25 THE WITNESS: I don't know who received litigation

1 holds.

2 BY MR. TESLICKO:

3 Q At this time, Mr. Dukellis was responsible for the
4 sell-side aspects of display, video and app advertising;
5 right?

6 A Yes.

7 Q And at 13:03:57, so going back to the document,
8 Mr. Islam responds to your suggestion: "K. Kicking off
9 now"; do you see that?

10 A Yes.

11 Q Fair to say that Mr. Islam knew what you meant by an
12 off-the-record ping; right?

13 A Yes.

14 Q Did he get that understanding from you as his
15 supervisor?

16 A It was just how we spoke. I don't know what you mean.
17 Everyone used the phrase off-the-record ping.

18 Q Did you ask other people to take chats off the record,
19 Mr. LaSala?

20 A I mean, not that I recall.

21 Q Could you have?

22 A It would be unusual. My MO was mostly off the record.
23 So old -- you know, old tricks die hard. So that's how I --
24 that's how I was sort of used to working to get on the same
25 page.

1 Q I want to understand better why you asked to take this
2 particular chat off the record.

3 You knew based on the litigation hold that we just
4 reviewed that the government was investigating Google's ad
5 tech business; right?

6 A I did.

7 Q And you knew, based on your training at Google, that
8 documents related to the ad tech business likely would be
9 turned over to the government at some point; right?

10 A I did.

11 Q And that was covered in Communicate With Care training,
12 for example?

13 A It was covered in the training.

14 Q And so you asked to go off the record here in a way
15 that ensured whatever was said in that subsequent
16 off-the-record chat would never be produced to the
17 government; right?

18 A No.

19 Q Let me unpack that a little, Mr. LaSala.

20 You understood that off-the-record chats were not
21 preserved as of the time of this chat in August of 2020;
22 right?

23 A Yes.

24 Q And so if the document is not preserved, it can't be
25 produced to the government; right?

1 A Yes.

2 Q Okay. Now, we've reviewed two chats right now because
3 a portion of those chats was preserved on the record.

4 Do you recall ever toggling history on after you
5 received the litigation hold in October of 2019?

6 A I don't really recall. I do have one recollection of
7 where, right after we got the training, one of my colleagues
8 texted me, pinged me, it was history off, but I didn't
9 initiate it. It had substance, so then I went and turned
10 history on, but it wasn't clear to me that, like, if I turn
11 history on if it retroactively gets everything. And then I
12 put it into an email because I thought -- I was trying to
13 figure out how to do this.

14 So I -- broadly speaking, I tried to follow the
15 terms of the litigation hold and do things in a way that
16 were different than how I had done them for a decade. And
17 obviously, like, I made a mistake, but it wasn't
18 intentional.

19 Q And I want to make sure I understand what you just
20 said.

21 Your understanding, at the time at least, was that
22 if someone sent you a chat with history off by default, even
23 if you turned history on, it wouldn't save the prior chats;
24 right?

25 A I didn't know.

1 Q But your belief was it wouldn't save them, that's why
2 you send yourself a copy of the chat you're recalling;
3 right?

4 A In that case, yeah.

5 Q Okay. Do you have any sense of how many other chats
6 related to the ad tech business were destroyed because you
7 didn't switch them to history on after receiving the
8 litigation hold in October of 2019?

9 A No.

10 Q More than 50?

11 A No. I have no -- I don't even -- we documented -- I
12 think it's proved by all of this -- every decision that we
13 made. The lead-up debating to the decision, the actual
14 decision, the implementation plan with the decision.

15 The one thing I do know is that we were really
16 good at documenting and debating, and to the extent I made a
17 mistake a couple times, it was not intentional. It was not
18 to hide anything. It was to -- everything was written down
19 everywhere.

20 Q I want to understand that a little better.

21 We've looked at two chats where you asked to go
22 off the record after October of 2019.

23 Sitting here today, do you have any estimate of
24 the number of other chats related to the ad tech business
25 that were off the record after 2019?

1 A No. No.

2 Q You have no idea if it could be more than 200, say?

3 A No. I tried my hardest. That would be unusual. I
4 tried my hardest not to.

5 MR. TESLICKO: Okay. With that, Your Honor, we
6 pass the witness.

7 THE COURT: All right. Will you be using the
8 depositions at all in cross-examination?

9 MR. ISAACSON: No.

10 THE COURT: All right.

11 CROSS-EXAMINATION

12 BY MR. ISAACSON:

13 Q Mr. LaSala, I'm Bill Isaacson, an attorney for Google.

14 Let's introduce yourself a little bit more. Where
15 do you work currently?

16 A Currently?

17 Q Yeah.

18 A Columbia Business School.

19 Q And what are you doing at Columbia?

20 A Teaching product management.

21 Q Okay. And what are -- what curriculum are you teaching
22 there?

23 A It's around building software products. Product
24 management. Software products.

25 Q And you've been at Columbia how long?

1 A Two and a half years.

2 Q Is this the first time you've been a teacher?

3 A Excuse me?

4 Q Is this your first time as a teacher?

5 A No. No.

6 Q Okay. What else have you done?

7 A I was an adjunct professor at Duke's Business School

8 before that.

9 Q Okay. And what course -- did you teach courses at

10 Google? Oh, I'm sorry. You taught at Duke while you were

11 at Google?

12 A While I was working at Google.

13 Q Okay. What did you teach at Duke?

14 A Digital platforms.

15 Q Okay. And the -- when you left Google, did you enter

16 into any type of severance or other agreement with Google?

17 A No.

18 Q Are you limited in any way by any agreement with

19 Google?

20 A No.

21 Q And what's your educational background?

22 A I have an undergraduate degree in accounting and a

23 graduate -- an MBA.

24 Q Where did you get the -- your degrees from?

25 A Boston College undergrad, and Duke MBA.

1 Q Okay. All right. And do you have experience or
2 training in computer programming or engineering?

3 A No.

4 Q All right. You mentioned the sell-side and the
5 buy-side. I think you described your work on the sell-side,
6 and then you express more limitations about the buy-side.

7 Would you explain to the Court what was your
8 involvement, if any, on the buy-side?

9 A Well, I worked on a team that had buy-side, similar
10 roles that I had but for the buy-side. So I talked to them
11 and knew them. But they ran their business with their
12 product managers, and we ran our business with our product
13 managers.

14 Q Okay. And then with your -- in your role at sell-side,
15 what Google products were you focused on?

16 A AdX and DFP, AdSense and AdMob.

17 Q Okay. And were you involved in the ultimate
18 decision-making for new product features or launches?

19 A No. I provided input into the process, but I wasn't a
20 decision-maker.

21 Q Who were the ultimate decision-makers on the strategy
22 decisions?

23 A Product and engineering.

24 Q And was your team -- were you or your team responsible
25 for deciding how products would be priced?

1 A No. We had input into the process to share opinions.

2 Q Okay. And who were the ultimate decision-makers on
3 Google's product pricing?

4 A The product team.

5 Q All right. Let me first talk to you about some of the
6 documents that my colleague from the plaintiff showed you.
7 And I shouldn't put that there. That's unwise. And I'm
8 going to try and do these.

9 So I'll be talking to you about documents that are
10 in the binder that you were given by plaintiffs.

11 MR. ISAACSON: And we need to have the other
12 binder ready to hand up after that.

13 BY MR. ISAACSON:

14 Q If you could look at PTX 114.

15 A Yes.

16 MR. ISAACSON: In order to make this more
17 efficient, I'm not going to necessarily do this logically
18 into subject matter, but I'm just going to go through these
19 in numerical order so it's easy to find.

20 THE COURT: Just do it. Just do it.

21 BY MR. ISAACSON:

22 Q So 114, that was an email that was back in 2012, and it
23 was talking about -- you were read language about locking in
24 impressions.

25 What is the product that's being discussed here?

1 A It looks like DFP.

2 Q And what -- and then there's a reference in the subject

3 matter to what?

4 A I'm sorry. Where should I be looking?

5 Q The subject matter of the email.

6 A Oh. AdX mobile standalone.

7 Q Right. So what is AdX mobile?

8 A I'm guessing it's AdX serving into a mobile

9 environment. Mobile 2012. Mobile environment. Yeah.

10 Mobile app environment.

11 Q Right. So the discussion here is talking about

12 impressions with relationship to AdX mobile; is that right?

13 A Yes.

14 Q All right. If you turn to PTX 238. And this was an

15 email chain. And if you turn to 610 at the bottom.

16 A Yes.

17 Q All right. You were read an email from someone named

18 Michelle Dauwalter --

19 A Yes.

20 Q -- about whether -- about being committed to

21 competition. That's followed in this discussion by an email

22 from Martin Blais. Do you know if I'm saying his name

23 right?

24 A I don't know him, so ...

25 Q Okay. And in this discussion on the next page, he

1 writes: "We, Google" -- this is the first full paragraph.
2 "We, Google, have a substantial proportion of that traffic,
3 and competition constantly strives to take that away from us
4 by providing ways to install mechanisms upstream from ours.
5 It used to be TYM. This time around it's header bidding.
6 Whatever. We turn around and try to provide competing
7 mechanisms, and this dance goes on."

8 Do you remember what TYM is?

9 A Total yield management.

10 (Reporter interrupted for clarification.)

11 THE WITNESS: I'm sorry. I'm losing my voice.

12 Total yield management.

13 BY MR. ISAACSON:

14 Q All right. PTX 254. On page 238, you were read
15 language from Lisa Lehman --

16 A Yes.

17 Q -- and about being the de facto preferred ad server
18 choice. And all of that is predicated in bold on the fact
19 that publishers need an answer. At the end of that
20 paragraph that says all that is predicated on the fact that
21 publishers needs an ad server, it says: "That is all
22 changing."

23 Now, the date of this -- this discussion is in
24 2015. It says Google -- goes on to say: "Google's products
25 and approach in public statements, Neal Mohan has said that

1 everything will be bidden! Are slowly but surely eroding
2 the need for DFP, as the publisher ad serving and
3 decisioning engine. I'm not thinking next year, but in
4 three to five years. In a world where nearly everything
5 that currently happens in DFP today can be executed via
6 real-time bidding pipes, ad exchange, SSPs really truly can
7 replace the ad server."

8 Regardless of how things turned out, were there
9 discussions in 2015 that the ad server was at risk of being
10 replaced?

11 A No, not that I remember.

12 Q Okay. Ms. Lehman then goes on to say on the next page,
13 Point 2: "We need to preserve the importance of the ad
14 server." At the end of paragraph 3 says: "The modern
15 publisher ad server needs to allow as many demand sources as
16 the publisher wants to compete in real time for a given
17 impression while following whatever rules and contractual
18 agreements between buyer and sellers have been established."

19 Did DFP allow for the use of header bidding?

20 A Oh, yes. In fact, we went out of our way to make it
21 work. Like, we had to do extra things with DFP using the
22 product as it wasn't intended to support a publisher's use
23 of header bidding. Specifically, increasing the number of
24 line items, which is kind of getting into the weeds a little
25 bit, but the number of line items from like thousands to

1 tens and in some cases, hundreds of thousands.

2 Q And if you look at the first page of the email, you
3 were shown the language about in your response to
4 Ms. Lehman, great write-up. The other thing you said,
5 beginning in the third paragraph: "Your point about
6 modernizing the ad server is dead-on."

7 Now, I realize this is almost ten years ago, but
8 you would agree with that in the context of this, that you
9 were not only saying to Ms. Lehman great write-up, including
10 her language about in three to five years we may be in a
11 world where nearly everything that currently happens in DFP
12 today can be executed via RT pipes and ad exchanges, SSPs
13 really can replace the ad server, you were saying that that
14 is a great write-up, and the point about modernizing the ad
15 server to respond to that is dead-on.

16 A Yeah. To be -- I don't remember this exchange, so I
17 can't recall exactly what I meant by great write-up or
18 dead-on or ...

19 Q All right. Can you turn to PTX 433.

20 And so you were read the language here about need
21 to fight off the existential threat posed by header bidding
22 and FAN.

23 This is December 2016. You were asked if FAN got
24 out of the business of open-web display. FAN continued with
25 respect to apps and mobile; right?

1 A Yes.

2 Q And when did it shift to the business of apps and
3 mobile?

4 A When did FAN? I don't remember the date.

5 Q It was a number of years after this; right?

6 A It sounds reasonable.

7 Q Okay. So during this period of time and through the
8 period until FAN shifted to -- well, is there some point
9 where you thought while you were at Google that FAN was no
10 longer an existential threat?

11 A No.

12 Q All right. And at risk of having -- being at risk of
13 being accused of misleading you, I want to look at one
14 document in the black binder now.

15 A Okay.

16 Q And I will come back to the white binder.

17 A Okay.

18 Q Is DTX -- do you have a DTX 590 in your binder?

19 A Yes.

20 Q All right. And you've told the Court about header
21 bidding being an existential threat to all of Google's ad
22 tech. I think that's what you said?

23 A I did.

24 Q All right. And if it assists you -- first of all,
25 DTX 590 is an email that you wrote on March 23rd, 2018;

1 correct?

2 THE COURT: Hold on. Is there an objection to
3 590.

4 MR. TESLICKO: No objection, Your Honor.

5 THE COURT: All right. It's in evidence.

6 BY MR. ISAACSON:

7 Q All right --

8 MR. TESLICKO: Sorry, Your Honor. I heard --
9 PTX 590? PTX or DTX.

10 THE COURT: I'm sorry, a plaintiff or defense
11 exhibit? Which is it?

12 MR. ISAACSON: This is PTX 590. I'm seeking to
13 admit one of their own exhibits.

14 MR. TESLICKO: Understood, Your Honor, DTX was on
15 the screen.

16 THE COURT: Well, I thought it was plaintiff. It
17 says PTX. All right. Plaintiffs' Exhibit 590 is in.

18 (Plaintiffs' Exhibit Number 590 admitted into evidence.)

19 BY MR. TESLICKO:

20 Q There's a section called price, and it says: "We went
21 out at 5 percent with EB." That's Exchange Bidding or Open
22 Bidding; right?

23 A Yes.

24 Q "Because we -- our goal was to combat the threat of
25 header bidding and free header bidding wrapper solutions.

1 There was an existential threat to demand leaving the ad
2 server, and our pricing reflected that market reality."

3 So the ad server is the publisher ad server DFP;
4 correct?

5 A Yes.

6 Q Okay. And this is talking about the pricing of
7 Exchange Bidding was set taking into account what you were
8 saying was this existential threat?

9 A Yes.

10 Q Now, returning to the white binder, PTX 612, if you
11 could. All right. And this was a document where you were
12 read language that you didn't think there was 20 percent of
13 value in comparing two bids. Right.

14 Now, is AdX doing more than comparing two bids?

15 A Yes.

16 Q Would you explain what AdX is doing more than comparing
17 two bids?

18 A So AdX is a demand aggregator, so Google demand and DV3
19 and then other third-party demand. AdX then runs sort of a
20 fair, clean auction against all of those demand sources.
21 AdX does sorting and analytics for our customers, and it
22 does so in an environment where it makes sure you can trust
23 the integrity of the auction. We covered some of this
24 earlier, but it provides protections around fraud, around
25 malware, around brand protections.

1 So, you know, a lot of what I was -- as we were
2 moving into the pricing conversations, at some point -- I'm
3 forgetting the details when -- one of the things I was
4 trying to do was to really figure out, like, how you would
5 parse -- how each one of those things I said equates to some
6 sort of value. So, like, how much does aggregating
7 third-party demand bring in value, you know, what
8 percentage. How much running the auction, you know. I
9 included in some of these things that it was, like, not 20.
10 Definitely just running an auction is not worth 20. But how
11 much is it worth? And how much is the aggregating demand?
12 How much is the protections? We never got there, but that
13 was sort of the direction I was headed.

14 Q All right. And in the next -- there's a paragraph that
15 has a dash in front of it, and you were read the language at
16 the end about extracting irrationally high rent from the
17 AdX.

18 The whole paragraph reads: "This would also put
19 appropriate pressure on Google to compete on targeting where
20 it is reasonable to assume that Amazon and Facebook actually
21 have better data, so we need to up our game and focus on
22 winning the game." And then it has the language that was
23 read.

24 Now, what does targeting refer to here?

25 A Targeting the advertiser spend to a position on a

1 content on the web or an app or whatever.

2 Q And what concerns did you have about Amazon and
3 Facebook having better data than Google for that?

4 A So I alluded to this earlier, but my feel was that the
5 companies with the best data and the companies with the best
6 technology would be the companies that would sort of prevail
7 in this long-term game. And Facebook knows what you're
8 doing and has really good audience data. And, Amazon,
9 frankly when they started to get into this business scared
10 me even more than Facebook because they have such great
11 commercial intent data, people shopping on them. So my real
12 paranoia kicked up actually years later when Amazon created
13 their ad network and their DSP using their own data.

14 Q All right. Now, in the next paragraph, you say: "One
15 might ask why the market continues to bear 20 percent. It
16 may be because of AdWords bringing liquidity from a long
17 tail."

18 AdWords is Google Ads; right?

19 A Yes.

20 Q And the long tail, is that the demand from -- the
21 Google demand that you were talking about?

22 A That's all the advertisers that buy on Google.

23 Q Right.

24 And just to be clear, when we're talking about
25 demand from Google, you're talking about the customers at

1 Google?

2 A Yes.

3 Q All right.

4 And then it says: "With respect to that demand,
5 that long tail, even that position is under attack, as
6 Facebook and Amazon prove they can also fill at high rates."

7 What does "fill at high rates mean"?

8 A It means they could take the advertiser's dollar, spend
9 it really efficiently on a publisher content provider's
10 website.

11 Q If you turn to PTX 613.

12 A So fill the ad slot. So -- I have to retrain my
13 memory. So the publishers provided their inventory
14 available to buyers and networks, and then when it was --
15 like it was filled. So not 100 percent was always filled.
16 But I guess what I'm remembering -- suggesting here is
17 Facebook and Amazon actually did a really good job of
18 winning auctions so that they filled the ad impression.

19 Q Okay. If we could turn to PTX 613.

20 All right. And you were read from Item 2 on the
21 first page about where it says "with my Google hat on."

22 "The right answer is not do something different
23 with Exchange Bidding and ask our sales team to jump through
24 hoops, but rather suggest that DBM" -- that's DV360 -- "stop
25 buying on third-party exchanges when they know they can see

1 the impression in AdX."

2 Was a suggestion that DV360 stop buying on
3 third-party exchanges accepted?

4 A No.

5 Q You referred -- when you talked about this suggestion,
6 you refer to header bidding and technology being subpar
7 technically.

8 What did you mean by that?

9 A I think I covered some of this. But the ad tech
10 ecosystem that we're talking about, there's a lot of
11 investment in making sure these auctions and ad servers run
12 really clear and there's access to the signals that you have
13 to do all this.

14 When -- and, again, I'm not like a technical
15 expert, but my understanding was, once it went to -- it went
16 to the headering, we lost signal quality. The way it was
17 implemented, it just took a lot longer for the signals to go
18 back and forth between the header and all of the exchanges,
19 and it created latency on the page.

20 So, I mean, it was sort of both things in that
21 case.

22 Q Okay. If you could turn to PTX -- sorry -- 719. And
23 turn to the second-to-last page, 002 at the bottom. Oh,
24 wait. No. 002 at the bottom.

25 A All right.

1 Q And there was an email from Jonathan Bellack that was
2 read to you in part. And in the middle of that paragraph it
3 also says: "Something similar happened." And this is a
4 discussion in 2018. "Something similar happened back in the
5 DoubleClick days with DFP. Falk made in-roads in the market
6 with prices. One-third of DFPs, and then we lowered DFP
7 prices to a fair market value. Still 25 to 50 percent
8 higher than Falk. Falk and the other ad servers out there
9 kept lowering prices in an effort to win business. They
10 kept lowering even to the point where some of their deals
11 were losing money because their alternative was to have no
12 revenue and go out of business. We did well because we
13 delivered really solid value for the prices we charged, but,
14 more importantly, we did not let our prices get out of whack
15 with the market."

16 Do you remember who Falk was?

17 A I don't.

18 Q If we could go to PTX 864. All right. First of all on
19 the first page, I think you said this, but I want to give
20 you the opportunity to make sure we have this clear.

21 At the end of the first bullet it says: "The
22 middle does take an outside share, and we are only part of
23 the middle. Yet, one could argue that we are the middle for
24 the both buy and sell-sides, we are taking an outsized
25 share." And you discussed whether the first part of that

1 should have had a "not" in it.

2 Would you explain your answer?

3 A Well, Prabhakar referenced them -- what did he say. He
4 referenced -- what he said was: "Until we find a better way
5 to articulate to the world that we're not hanging onto an
6 outside" --

7 (Reporter interrupted for clarification.)

8 THE WITNESS: "An outside chunk of money" -- so
9 "until we find a better way to articulate to the world that
10 we're not hanging onto an outsized chunk of money, there
11 will continue to be this noise from publishers."

12 And then I say I half agree with Prabhakar, and
13 then I don't state what he said.

14 BY MR. ISAACSON:

15 Q All right.

16 A He would have said not.

17 Q All right. And then there was discussion -- you were
18 read language about transparency. And moving down to, on
19 that first page below Ad Manager's SSP. It talks about your
20 rate card.

21 And this would be your rate card for publishers?

22 A Yes.

23 Q And it says: "These are transparent to publishers, so
24 I'm not sure what their beef is. I think buyers want to
25 know how much we're taking from the pub." All right.

1 The people -- your rate cards for publishers were
2 transparent to the publishers; correct?

3 A Yes.

4 Q Okay. And then you were shown language on the next
5 page. The second bullet: "It's questionable that
6 20 percent for OA is reasonable long-term. Pubs accept it
7 because it brings demand Google Ads. If Google Ads bought
8 everywhere else, I think we would see pubs move to other
9 SSPs for OA, and we would lose the 20 percent."

10 I think you talked about, like, that was something
11 you were advocated within Google. Would you explain that?

12 A What was I advocating?

13 Q You were talking about the positions you were taking
14 about whether there should be integrations with other
15 exchanges, for example.

16 A With our buy-side?

17 Q Let me move on. I'll just go on to -- it goes on to
18 say: "Amazon will put the biggest pressure on us over time.
19 If they care to continue to invest here, they have the
20 resources to be a fully functioning SSP via TAM and could
21 suck out all third-party demand from our auction over time.
22 This has not yet happened, but is a risk to watch."

23 All right. Would you explain what your perception
24 was of Amazon as a competitor at this date, which is
25 October 2019?

1 A So Amazon was a buyer, so, like, a DSP in network, and
2 they were buying inventory, competing with all other buyers,
3 including Google. But they were also starting to invest in,
4 like, exchange functionality. And just given that -- how
5 good they were as a buyer -- and they were just getting
6 started and they were good. I can't even imagine how good
7 they are now with all the investment they've had in it. I
8 thought, well, they're definitely a competitor for our
9 network products.

10 But then I thought, they also could easily be a
11 competitor for our SSP products -- could be a competitor for
12 our SSP products, as well as our ad serving products,
13 insofar as they had lots of resources. And, in my opinion,
14 they really didn't have any skin in the game in the -- in
15 how the Internet functioned. Meaning, Google's business
16 model was, hey, let's make sure there's a robust content
17 creation ecosystem that evolves over time across all web
18 app, connected TV, video, whatever, and let's make sure that
19 our tools continue to do that. And then we have advertising
20 tools that we could use to support that content creation,
21 everything we've sort of talked about.

22 Amazon was looking for an incremental revenue
23 stream. It didn't have skin in the game in a -- in my
24 opinion in like a functioning content creation ecosystem.
25 They had skin in the game in, like, e-commerce, which

1 they're really good at.

2 So it was feasible to think that, because they
3 were doing it, they created this SSP called TAM and another
4 one called UAM. And then I was worried that they would
5 essentially give it away. And if they gave it away,
6 practically speaking, demand would flow through there. Not
7 all of it, some of it, but this was the risk. And in which
8 case if demand stopped flowing through our SSP and, frankly,
9 other SSPs, you lose the funding mechanism to actually
10 invest in what makes the exchange safe and a fair auction.

11 So I was really skeptical. I didn't trust them.

12 Q All right. And right below that there's a description
13 of your fraud protections. "I think the market does
14 appreciate what our platforms buy and sell do to protect the
15 integrity of the auction, protect advertisers, protect
16 pubs" -- that is publishers -- "protect users, even if they
17 are vocally hard on us when bad things slip through. I'm
18 not sure we are selling this to the market strongly enough
19 so that we can better equate value with price."

20 What was your view on the value of these
21 protections that you thought should be communicated?

22 A This is exactly the point I was trying to make earlier
23 where all of these things -- so integrity of the auction,
24 protect advertisers, protect pubs, protect users. The
25 platform did -- as well as aggregate demand, our demand and

1 other demand. So the narrative in the market that I, you
2 know, shared in these documents, too, is that, oh, it's
3 just, you know, 20 percent, it's the auction rate, but it's
4 really all of -- I mean, comparing -- for comparing two
5 bids, but it's really all of these things.

6 Q All right. If you could look at PTX 927. There's an
7 email on the first page, and you were read the paragraph at
8 the bottom. "It's also worth noting" -- well, you were read
9 part of this. "It is also worth noting that we seem to have
10 some leaks about how we are approaching this work. As in
11 some of the content in articles, tweets, et cetera sound a
12 bit too familiar, so also a good reminder to teams to stick
13 to our scripts."

14 It was suggested to you that you had a script for
15 investigations as opposed to communicate -- public
16 communications --

17 MR. TESLICKO: Objection, Your Honor. Misstates
18 the question and the answer from the prior testimony.

19 THE COURT: No. I'm going to overrule the
20 objection.

21 BY MR. ISAACSON:

22 Q Would you clarify, in this last paragraph, are you
23 talking about what I would call --

24 THE COURT: What are you talking about?

25 BY MR. ISAACSON:

1 Q Yeah. What are you talking about here?

2 A Sorry. I don't remember writing the email. I honestly
3 don't remember this.

4 Q The -- now if we can go to our little black binder.
5 All right. If you could look at DTX 463 in that binder.

6 THE COURT: Any objection to 463?

7 MR. TESLICKO: Your Honor, this appears to be
8 hearsay.

9 MR. ISAACSON: I'm happy to --

10 MR. TESLICKO: And no connection to Mr. LaSala, as
11 far as I can tell.

12 THE COURT: All right. Lay a foundation.

13 BY MR. ISAACSON:

14 Q I'm showing you what's been marked DTX 463, it's titled
15 "Sell-Side Competitive Review, Facebook and Amazon" dated
16 August 7th, 2017.

17 Have you seen this document before?

18 A Yes.

19 Q What was your role in this document?

20 A I reviewed it. It was presented to me.

21 THE COURT: I'm sorry?

22 THE WITNESS: Excuse me, Your Honor.

23 It was presented to me. I was a reviewer.

24 THE COURT: During that time period for your
25 litigation purposes?

1 THE WITNESS: Oh, during the time period.

2 THE COURT: I'm sorry?

3 THE WITNESS: During the time period.

4 THE COURT: All right.

5 BY MR. ISAACSON:

6 Q It's titled "Sell-Side Competitive Review."

7 What is a sell-side competitive review?

8 A Well, we would sort of periodically annually ask our
9 go-to-market teams and GBL teams to kind of update the
10 nature of the market.

11 MR. ISAACSON: I move to admit DTX 463.

12 MR. TESLICKO: Your Honor, I don't believe there's
13 a foundation yet that's been laid to admit this as an
14 exception to the hearsay rule.

15 THE COURT: Well, it's a document -- is this a
16 regularly produced type of document from your experience at
17 Google?

18 THE WITNESS: Yes. They would look different,
19 like they weren't always the same format. But we talked
20 about competition all the time.

21 THE COURT: I'm permitting it. It's overruled.

22 (Defense Exhibit Number 463 admitted into evidence.)

23 THE COURT: Just so we're clear, though, I see
24 some blue sheets in here. Are we getting two versions of
25 this?

1 MR. ISAACSON: Is this one of the ones with the
2 natives? No. Oh. Some of these have charts -- exhibits
3 have charts in it that are very hard to read, and so just
4 for the ease of readability, we've put the native versions
5 on the back, which are bigger in case we need to look at
6 them. We're not seeking to move the natives or anything,
7 it's just a visual aid.

10 MR. ISAACSON: No. There's no redaction issues.
11 This is --

12 THE COURT: All right. That's fine.

13 And, you know what, it's just about 1:00, and
14 since we're starting a new topic, why don't we take the
15 lunch break now. We'll start up again at 2:00. All right.

16 (Court recessed for lunch at 12:59 p.m.)

18 I certify that the foregoing is a true and accurate
19 transcription of my stenographic notes.

Stephanie Austin

Stephanie M. Austin, RPR, CRR